



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 14 जुलाई, 2020 / 23 आषाढ़, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 22nd August, 2019

No. Shram(A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	201/14	Ajay Kumar	Registrar CSK, HPKVV Palampur	01-06-2019
2.	177/14	Kuldeep Singh	Registrar CSK, HPKVV Palampur	01-06-2019
3.	183/14	Rippan Kumar	Registrar CSK, HPKVV Palampur	01-06-2019
4.	155/14	Ashok Kumar	Registrar CSK, HPKVV Palampur	01-06-2019
5.	148/14	Karam Singh	Registrar CSK, HPKVV Palampur	01-06-2019
6.	137/14	Kulbir Singh	Registrar CSK, HPKVV Palampur	01-06-2019
7.	82/18	Vijay Kumar	Employer M/s Ambika Industries	03-06-2019
8.	83/18	Subhash Chand	Employer M/s Ambika Industries	03-06-2019
9.	93/18	Pawan Kumar	Employer M/s Ambika Industries	03-06-2019
10.	92/18	Surender Singh	Employer M/s Ambika Industries	03-06-2019
11.	91/18	Bal Krishan	Employer M/s Ambika Industries	03-06-2019
12.	90/18	Rajesh Kumar	Employer M/s Ambika Industries	03-06-2019
13.	89/18	Tara Chand	Employer M/s Ambika Industries	03-06-2019
14.	88/18	Deepak Kumar	Employer M/s Ambika Industries	03-06-2019
15.	87/18	Rajesh Kumar	Employer M/s Ambika Industries	03-06-2019
16.	86/18	Mohan Lal	Employer M/s Ambika Industries	03-06-2019
17.	85/18	Ramesh Chand	Employer M/s Ambika Industries	03-06-2019
18.	84/18	Shiv Kumar	Employer M/s Ambika Industries	03-06-2019
19.	167/14	Deep Chand	Registrar CSK, HPKVV Palampur	03-06-2019
20.	208/14	Simro Devi	Registrar CSK, HPKVV Palampur	03-06-2019
21.	189/14	Pawna Devi	Registrar CSK, HPKVV Palampur	03-06-2019
22.	14/19	Sohan Singh	DM HRTC, Dharamshala	04-06-2019
23.	900/16	Pritam Singh	E.E. HPPWD, Nurpur & others	04-06-2019
24.	766/16	Pappu Ram	E.E. HPPWD, Sunder Nagar	06-06-2019
25.	214/15	Dole Ram	E.E. I&PH, Karsog	06-06-2019

26.	249/14	Uma Chand	E.E. HPPWD, Karsog	07-06-2019
27.	627/16	Surender Kumar	E.E. HPPWD, Killar	12-06-2019
28.	384/16	Laxmi Chand	E.E. HPPWD, Killar	12-06-2019
29.	60/16	Bib Dei	E.E. HPPWD, Killar	12-06-2019
30.	205/14	Dhani Ram	Registrar CSK HPKVV Palampur	14-06-2019
31.	159/14	Mukesh Kumar	Registrar CSK HPKVV Palampur	14-06-2019
32.	166/14	Parvati Devi	Registrar CSK HPKVV Palampur	14-06-2019
33.	116/17	Chaman Lal	Employer M/S GVK EMRI	15-06-2019
34.	119/17	Rohit Sharma	Employer M/S GVK EMRI	15-06-2019
35.	168/14	Vineet Kumar	Registrar CSK HPKVV Palampur	15-06-2019
36.	202/14	Vijay Kumar	Registrar CSK HPKVV Palampur	15-06-2019
37.	203/14	Anup Kumar	Registrar CSK HPKVV Palampur	17-06-2019
38.	144/14	Vinod Kumar	Registrar CSK HPKVV Palampur	17-06-2019
39.	175/14	Suresh Kumar	Registrar CSK HPKVV Palampur	17-06-2019
40.	801/16	Ajay Katoch	Pr. Chief Cons. of Forest & others	15-06-2019
41.	678/16	Rakesh Chand	D.F.O. Palampur	15-06-2019
42.	162/14	Shreshtha Devi	Registrar, CSK HPKVV Palampur	18-06-2019
43.	70/14	Kuldeep Kukreja	Amar Ujala Publication	24-06-2019
44.	152/14	Ashwani Kumar	Registrar CSK HPKVV Palampur	24-06-2019
45.	163/14	Karam Chand	Registrar CSK HPKVV Palampur	24-06-2019
46.	195/14	Rajinder Kumar	Registrar CSK HPKVV Palampur	24-06-2019
47.	185/14	Kuldeep Kumar	Registrar CSK HPKVV Palampur	25-06-2019
48.	116/14	Kailash Nath	Chairman M.G. Group	21-06-2019
49.	843/16	Keshav Ram	E.E. I&PH Karsog	20-06-2019
50.	842/16	Tara Chand	E.E. I&PH Karsog	20-06-2019
51.	46/19	Bablu Ram	M.D. M/S Sunshine Hydro	28-06-2019

By order,

NISHA SINGH, IAS

Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 201/2014

Date of Institution : 03-5-2014

Date of Decision : 01-6-2019

Shri Ajay Kumar s/o Shri Bharebtu Ram, r/o V.P.O. Rakkar Rojot, Tehsil Baijnath,
District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ajay Kumar s/o Shri Bharebtu Ram, r/o V.P.O. Rakkar Rojot, Tehsil Baijnath, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry/Organic Agriculture department w.e.f. 5.6.2007 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry/Organic Agriculture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th

March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry/Organic Agriculture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry/Organic Agriculture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed

by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during July, 2007, for which he has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from July, 2007 upto February, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu

of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ajay Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I, copy of office order dated 19.7.2010 as Ex. PW1/J and copy of seniority list as Ex. PW1/K. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D4, copy of award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of letter dated 29.1.2011 as Ex. RW1/G, copy of license of M/s Sahayta Security as Ex. RW1/H, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/I, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex.

RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex.RW1/P, copy of registration certificate dated 11.7.2014 as Ex.RW1/Q and copy of license of M/s Sahayta Security services Ex.RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes

Relief :

Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ajay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K. In the cross-examination, he admitted that he has not filed any document showing him to be a daily wage. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster-rolls have been regularized. He clearly admitted his signatures on Mark-RA and Mark-RB (now as Ex. RW1/D1 to Ex.

RW1/D4). He admitted that in the fields seasonal work is done. He was also categorical that he works in the fields. He denied that he is making a phoney statement.

11. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

12. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

13. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen–Deployment and termination of such workmen.

17. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

18. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

19. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

20. Ex. PW1/K is the copy of seniority list of daily waged workers in the CSK HPKV as it stood on 31.3.2008.

21. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2007. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2007 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

22. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

23. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

24. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

25. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

26. Ex. RW1/D1 to Ex. RW1/D4 are the copies of contingent bills relating to the petitioner.

27. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

28. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

29. Ex. RW1/G is the copy of letter dated 29.1.2011 regarding registration of establishment.

30. Ex. RW1/H is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

31. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security Services.

32. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

33. Ex. RW1/K is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

34. Ex. RW1/L is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

35. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

39. Ex. RW1/Q is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial and Escorts Services.

40. Ex.RW1/R is the copy of licence dated 5.8.2006 relating to M/s Sahyata Security.

41. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

42. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

43. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

44. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on bills/contingent bills, Ex. RW1/D1 to Ex. RW1/D4. These are bills/lists through which payments were made to the petitioner. Furthermore, it was clearly admitted by the petitioner that in the fields seasonal work was being done. He was also categorical that in the department he was working in the fields as a beldar. These admissions on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Rather, it appeared that he used do seasonal work in the department. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D4, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated

13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

45. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has been seen in the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

46. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

47. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

48. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

49. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked as a seasonal worker, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

50. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

51. Not pressed.

Relief :

52. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 177/2014

Date of Institution : 02-5-2014

Date of Decision : 01-6-2019

Shri Kuldeep Singh s/o Shri Surjan Singh, r/o Village Ambari, P.O. Malan, Tehsil and District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhyalya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kuldeep Singh s/o Shri Surjan Singh, r/o Village Ambari, P.O. Malan, Tehsil and District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university.

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Rice and Wheat department *w.e.f.* the year 2001 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice and Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice and Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were

issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice and Wheat department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during August, 2001, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had himself worked as a contractor and had raised various bills. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kuldeep Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copy of certificate of registration as Ex. PW2/A and copies of licenses of M/s Sun Security New Vision Security as Ex. PW2/B and Ex. PW2/C respectively. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D4, copy of award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of letter dated 29.1.2011 as Ex. RW1/G, copy of license of M/s Sahayta Security as Ex. RW1/H, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/I, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/P, copy of registration certificate dated 11.7.2014 as Ex. RW1/Q and copy of license of M/s Sahayta Security services Ex. RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kuldeep Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster-roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster-rolls have been regularized. He clearly admitted his signatures on Mark-RA (now as Ex. RW1/D1 to Ex. RW1/D4). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of registration certificate of CSKHPKVV Palampur as Ex.PW2/A and copies of licenses of M/s Sun Security and M/s. New Vision as Ex.PW2/B and Ex. PW2/C respectively.

In the cross-examination, he admitted that the university is an educational institute. He feigned ignorance that research work is conducted in the university. Ex. PW2/A was issued for work in the Research Project in Agriculture Field Operations.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen–Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B to Ex.PW2/C are the copies of licenses dated 2.9.2011 and 21.8.2012 pertaining to M/s Sun Security Service and M/s Nuvision Commercial & Escorts services.

23. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2001. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2001 uptil the year 2010, the petitioner had worked for 240 days in each year

and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D1 to Ex. RW1/D4 are the copies of contingent bill relating to the petitioner.

29. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/G is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/H is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security Services.

34. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/K is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/L is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

41. Ex.RW1/Q is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial and Escorts Services.

42. Ex.RW1/R is the copy of licence dated 5.8.2006 relating to M/s Sahyata Security.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F4. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster-roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D4, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At

this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2001 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had

been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. I CARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No. 1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 183/2014

Date of Institution : 02.5.2014

Date of Decision : 01.6.2019

Shri Rippen Kumar s/o Shri Budhi Singh, r/o Village Ambari, P.O. Malan, Tehsil and District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rippen Kumar s/o Shri Budhi Singh, r/o Village Ambari, P.O. Malan, Tehsil and District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Rice and Wheat department *w.e.f.* the year 1994 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice and Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the

HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice and Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without

making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on individual work contract basis during August, 2003, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had himself worked as a contractor and had raised various bills from February/March, 2006 upto March, 2010. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with

respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
10. Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rippen Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statues of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copy of certificate of registration as Ex. PW2/A and copies of licenses of M/s Sun Security and New Vision Security as Ex. PW2/B and Ex. PW1/C respectively. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D26, copy of award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of letter dated 29.1.2011 as Ex. RW1/G, copy of license of M/s Sahayta Security as Ex. RW1/H, copy of

license of M/s Sun Security dated 27.7.2011 as Ex. RW1/I, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark –X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/P, copy of registration certificate dated 11.7.2014 as Ex. RW1/Q and copy of license of M/s Sahayta Security services Ex. RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rippen Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record

by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA (now as Ex. RW1/D1 to Ex. RW1/D24). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of registration certificate of CSKHPKV Palampur as Ex.PW2/A and copies of licenses of M/s Sun Security and M/s New Vision as Ex.PW2/B and Ex. PW2/C respectively.

In the cross-examination, he admitted that the university is an educational institute. He feigned ignorance that research work is conducted in the university. Ex. PW2/A was issued for work in the Research Project in Agriculture Field Operations.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011

22. Ex. PW2/B to Ex.PW2/C are the copies of licenses dated 2.9.2011 and 21.8.2012 pertaining to M/s Sun Security Service and M/s Nuvision Commercial & Escorts services.

23. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1994. Volunteered that, after the year 2010 the workers had been kept on outsource basis.

Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1994 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D1 to Ex. RW1/D4 are the copies of contingent bill relating to the petitioner.

29. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

31. Ex. RW1/G is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/H is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security Services.

34. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/K is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/L is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

41. Ex. RW1/Q is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial and Escorts Services.

42. Ex. RW1/R is the copy of licence dated 5.8.2006 relating to M/s Sahyata Security.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner himself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/D24. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency.

Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster-roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D24, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1994 upto April, 2010, without any breaks. No such record has been seen in the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Em ployees' Uni on vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No. 1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 To 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 155/2014
Date of Institution : 16.4.2014
Date of Decision : 01.6.2019

Shri Ashok Kumar s/o Shri Rattan Chand, r/o Village Amtrar, P.O. Sunehar, Tehsil and District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ashok Kumar s/o Shri Rattan Chand, r/o Village Amtrar, P.O. Sunehar, Tehsil and District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Seed Production department *w.e.f.* the year 2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Seed Production department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor.

Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Seed Production department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Seed Production department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been

paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on work contract basis during June, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on contract basis from June, 2007 upto February, 2010. He raised various bills. The head of department had not violated any provisions of the Act. The petitioner himself refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar project from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the

payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR*.
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ashok Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of letter dated 13.11.1998 as Ex. PW1/C, copy of letter dated 17.2.1999 as Ex. PW1/D, copy of letter dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue as Ex. PW1/G, copy of proceeding dated 4.4.2009 as Ex. PW1/H, copy of Agreement as Ex. PW1/I, copy of office order dated 19.7.2010 as Ex. PW1/J, and copy of Seniority list as Ex. PW1/K. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of notification dated 13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D to Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of detail of the petitioner as Ex. RW1/I, copy of contingent bill of payment receipts as Ex. RW1/J to Ex. RW1/Z10, copy of Award as Ex. RW1/Z11, copy of order dated 20.3.2014 as Ex. RW1/Z12, copies of registration certificates as Ex. RW1/Z13 to Ex. RW1/Z17, copies of Agreement deeds as Ex. RW1/Z18 to Ex. RW1/Z23.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : No

Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ashok Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid worker is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster-roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university and that Ex. PW1/B to Ex. PW1/F give a description of those projects. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

21. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

22. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

23. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

26. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

27. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

28. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

29. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

30. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

31. Ex. RW1/I is the copy of working detail of the petitioner.

32. Ex. RW1/J to Ex. RW1/Z10 are the copies bills/contingent bills relating to the petitioner.

33. Ex. RW1/Z11 is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

34. Ex. RW1/Z12 is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

35. Ex. RW1/Z13 is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

36. Ex. RW1/Z14 is the copy of certificate of registration dated 27.7.2011 pertaining to M/s Sun Security Service.

37. Ex. RW1/Z15 is the copy of application for registration of establishments employing contract labour issued by Labour Officer-*cum*-Registering Officer, Dharamshala.

38. Ex. RW1/Z16 is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

39. Ex. RW1/Z17 is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-*cum*-Registering Officer, Dharamshala.

40. Ex. RW1/Z18 is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

41. Ex. RW1/Z19 is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

42. Ex. RW1/Z20 is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

43. Ex. RW1/Z21 is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. RW1/Z22 is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/Z23 is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Makgt. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514*, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

47. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked in the years 2007 to 2009 as an unregistered contractor himself and thereafter, as per this document, he is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/J to Ex. RW1/Z10, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then,

how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

48. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 uptil March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

49. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

50. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

51. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case

titled as *Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509*, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

52. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

53. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 148/2014
Date of Institution	: 16-4-2014
Date of Decision	: 01-6-2019

Shri Karam Singh s/o Shri Roshan Lal, r/o Village Bandbihar, P.O. Deogran, Tehsil Palampur, District Kangra, H.P. . .Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Karam Singh s/o Shri Roshan Lal, r/o Village Bandbihar, P.O. Deogran, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Soil Science department *w.e.f.* 1.1.2002 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Soil Science department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/ Director Research had verbally asked the petitioner and other co-workmen of the Soil Science department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240

days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Soil Science department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean

hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during July, 2006, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor from July, 2008 upto January, 2010. He had raised various bills. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The head of department had not violated any provisions of the Act. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar project from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Karam Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of letter dated 13.11.1998 as Ex. PW1/C, copy of letter dated 17.2.1999 as Ex. PW1/D, copy of letter dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue as Ex. PW1/G, copy of proceeding dated 4.4.2009 as Ex. PW1/H, copy of Agreement as Ex. PW1/I, copy of office order dated 19.7.2010 as Ex. PW1/J, and copy of Seniority list as Ex. PW1/K. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of notification dated 13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D & Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of detail of the petitioner as Ex. RW1/I, copy of contingent bill of payment receipts as Ex. RW1/J to Ex. RW1/O, copy of Award as Ex. RW1/P, copy of order dated 20.3.2014 as Ex. RW1/Q, copies of registration certificates as Ex. RW1/R to Ex. RW1/V, copies of Agreement deeds as Ex. RW1/W to Ex. RW1/Z.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed per operative part of the Award.

EASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Karam Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid worker is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster-roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster-roll. He also admitted that he had worked in various projects of different departments of the university and that Ex. PW1/B to Ex. PW1/F give a description of those projects. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

21. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2002. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2002 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

22. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

23. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

26. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

27. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

28. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

29. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

30. Ex. RW/1H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

31. Ex. RW1/I is the copy of working detail of the petitioner.

32. Ex. RW1/J to Ex. RW1/O are the copies bills/contingent bills relating to the petitioner.

33. Ex. RW1/P is the copy of Award dated 30.6.2014 passed in Reference No. 124/2011 by this Court.

34. Ex. RW1/Q is the copy of order dated 20.3.2014 passed in Reference No. 207/2010 by this Court.

35. Ex. RW1/R is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

36. Ex. RW1/S is the copy of certificate of registration dated 27.7.2011 pertaining to M/s Sun Security Service.

37. Ex. RW1/T is the copy of application for registration of establishments employing contract labour issued by Labour Officer-cum-Registering Officer, Dharamshala.

38. Ex. RW1/U is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

39. Ex. RW1/V is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-cum-Registering Officer, Dharamshala.

40. Ex. RW1/W is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

41. Ex. RW1/X is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

42. Ex. RW1/Y is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

43. Ex. RW1/Z is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. RW1/Z1 is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/Z2 is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was

also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

47. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked from July, 2006 to 2008 on work individual contract basis and thereafter, for the period *w.e.f.* June, 2008 to March, 2010 as an unregistered contractor himself. Later, as per this document, he is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/J to Ex. RW1/O, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2002 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

48. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2002 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the

petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

49. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

50. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

51. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

52. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter as a contractor and later on under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

53. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 137/2014

Date of Institution : 05.4.2014

Date of Decision : 01.6.2019

Shri Kulbir Singh s/o Shri Kashmir Singh, r/o VPO Banoori, Tehsil Palampur, District Kangra, H.P. . .Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kulbir Singh S.O. Sh. Kashmir Singh, VPO Banoori, Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry/Organic department *w.e.f.* January, 2006 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry/Organic department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry/Organic department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings

took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry/Organic department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. It was asserted that as the petitioner had never been engaged by the respondent, so the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondent on the grounds that the services of the workers had not been engaged as daily paid labourers on muster-roll basis. The respondent had never forced the petitioner to work under the M/s Sahayata Security Services. No record has been placed on the file by the petitioner in support his claim. The provisions of the Act are not attracted in this case as the petitioner was not engaged by the respondent university. The Director of

Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that his services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kulbir Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of notification dated 13.11.1998 as Ex. PW1/C, copy of office order dated 17.2.1999 as Ex. PW1/D, copy of notification dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue of CSK as Ex. PW1/G, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I copy of office order dated 19.7.2010 as Ex. PW1/J and seniority list as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated

13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D and Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of Award as Ex. RW1/I, copy of order dated 20.3.2014 as Ex. RW1/J, copies of registration certificates as Ex. RW1/K to Ex. RW1/O and copies of agreement deeds as Ex. RW1/P to Ex. RW1/U.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kulbir Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that he had not got any appointment letter from the university. He clearly admitted that seniority list is prepared only of daily wagers. He was categorical that his name does not figure in the seniority list, nor he had raised any objection in this regard. Further, he admitted that all the workers engaged on muster roll by the university have been regularized as per the policy of the Government. He specifically denied that he had never been kept on muster roll. He had to admit that he has not annexed any muster roll with the petition. It was also admitted by him that he had worked in different projects of various departments of the university and that Ex. PW1/B to Ex. PW1/F give the description of the projects. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works were being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and he had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the copy of seniority list of the daily waged workers in the CSK HPKV as it stood on 31.3.2008.

22. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

23. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

24. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the

unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

28. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

30. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

31. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

32. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

34. Ex. RW1/I is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

35. Ex. RW1/J is the copy of order dated 20.3.2014 passed in Reference No. 207/2010 by this Court.

36. Ex. RW1/K is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

37. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011 which corresponds to Ex. PW2/B.

38. Ex. RW1/M is the copy of application for registration of establishments employing contract labour issued by Labour Officer-cum-Registering Officer, Dharamshala.

39. Ex. RW1/N is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

40. Ex. RW1/O is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-cum-Registering Officer, Dharamshala.

41. Ex. RW1/P is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

42. Ex. RW1/Q is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

43. Ex. RW1/R is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. RW1/S is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/T is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/U is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

48. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had never been engaged by the university. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. He while under cross-examination was categorical that in case of a daily paid worker appointment letter is issued and that the university had not issued any appointment letter to him. Then, he tendered in evidence a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008, as Ex. PW1/K. A similar seniority list has also been placed and exhibited on record by the respondent as Ex. RW1/E. The name of the petitioner nowhere figures in this seniority list as a daily paid worker. Placed on record by the respondent is also the revised seniority list of daily paid workers as it stood on 31.3.2006, as Ex. RW1/D. The name of the petitioner also does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his

mouth as to why he did not agitate the matter at the earliest and had challenged the seniority lists. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in January, 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

49. Next, it was claimed by the petitioner that he had worked continuously with the respondent from January, 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

50. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903*** and ***Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

51. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759*** and

Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

52. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Em ployees' Uni on vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

53. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority lists, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker and he is not entitled to any relief, as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5 :

54. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief :

55. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 82/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Vijay Kumar s/o Shri Sant Kumar, r/o Village Sahjowal, P.O. Sukhsal, Tehsil Nangal,
District Ropar (Punjab) . *Petitioner.*

Versus

The Employer M/s Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R. K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 82/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 83/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Subhash Chand s/o Shri Chhoanki Ram, r/o Village Dharar, P.O. Baldhad, Tehsil Jhandhuta, District Bilaspur (H.P.) . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P. . *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R. K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“C;ku fd;k fd eSa Ref. No. 83/2018 dks u pykuk pkgark gWawA bls nkf[ky nIrj fd;k tkosA”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref. No. : 93/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Pawan Kumar s/o Shri Khushi Ram, r/o Village & P.O. Santoshgarh, Tehsil & District Una (HP) . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P. . *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“C;ku fd;k fd eSa Ref. No. 93/2018 dks u pykuk pkgark gawA bls nkf[ky n[rj fd;k tkosA”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 92/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Surender Singh s/o Shri Gurdev Singh, r/o Village Majara, P.O. Sanoli, Tehsil &
District Una (H.P.) . . . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. . . *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“C;ku fd;k fd eSa Ref. No. 92/2018 dks u pykuk pkgmk gWawA bls nkf[ky nIrj fd;k tkosA”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref No. : 91/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Bal Krishan s/o Shri Mohan Lal, r/o Village & P.O. Sansowal, Tehsil Haroli, District Una (H.P.) . .Petitioner.

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P. . .Respondent.

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 91/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 90/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Rajesh Kumar s/o Shri Hari Om Parkash, r/o Village & P.O. Kungrat, Tehsil Haroli,
District Una (H.P.) . . .Petitioner.

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. . .Respondent.

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 90/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 89/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Tara Chand s/o Shri Kashmiri Lal, r/o Village & P.O. Ghardi Mansowal, Tehsil
Gharthshankar, District Hoshiarpur (Punjab) . . . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. . . *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R. K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 89/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 88/2018
Date of Institution : 25-8-2018
Date of Decision : 03-06-2019

Shri Deepak Kumar s/o Shri Jagat Ram, r/o Village Bhadoliya Kalan, P.O. Bhadala, Tehsil
& District Una (H.P.) . . . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. . . *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 88/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 87/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Rajesh Kumar s/o Shri Roop Lal, r/o Village Gaah, P.O. Malraon, Tehsil Jhandutta,
District Bilaspur (H.P.) . . . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. . . *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R. K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 87/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 86/2018
Date of Institution : 25-8-2018
Date of Decision : 03-06-2019

Shri Mohan Lal s/o Shri Kanshi Ram, r/o Village Bhagwal, P.O. Bharmad, Tehsil Jawali,
District Kangra, (H.P.) . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R. K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 86/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 85/2018
Date of Institution : 25-8-2018
Date of Decision : 03-06-2019

Shri Ramesh Chand s/o Shri Jagdish Chand, r/o Village & P.O. Bathu, Tehsil Haroli,
District Una (H.P.) . *Petitioner.*

Versus

The Employer M/s. Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R. K. Singh Parmar, AR
For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R.K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 85/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 84/2018

Date of Institution : 25-8-2018

Date of Decision : 03-06-2019

Shri Shiv Kumar s/o Shri Sukh Dev, r/o Village & P.O. Lalari, Tehsil Haroli, District Una
(H.P.) . . . *Petitioner.*

Versus

The Employer M/s Ambika Industry, V&PO Bathu, Tehsil Haroli, District Una, H.P.
. . . *Respondent.*

Reference under Section 2-A of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R. K. Singh Parmar, AR

For the Respondent : None

AWARD/ORDER

1. A direct reference under Section 2-A of the Industrial Disputes Act, 1947 has been filed by the petitioner for adjudication seeking his reinstatement in service with all consequential benefits.

2. The case is listed for today for the service of the respondent but, however, Shri R. K. Singh Parmar, Authorized Representative for petitioner has made the below given statement in the Court today:—

“ब्यान किया कि मैं Ref. No. 84/2018 को न चलाना चाहता हूँ। इसे दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by the learned Authorized Representative for the petitioner, the petitioner is not entitled to any relief as claimed in the statement of claim. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 167/2014
Date of Institution : 17-4-2014
Date of Decision : 03-6-2019

Shri Deep Chand s/o Shri Makholi Ram, r/o Village Chandred, P.O. Salyana, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhyalya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Deep Chand s/o Sh. Makholi Ram, r/o Village Chandred, P.O. Salyana, Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Agriculture Engineering department *w.e.f.* the year 2004 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agriculture Engineering department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agriculture Engineering department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner

alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2004 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on individual work contract basis during May, 2004, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a individual work contract basis from December, 2007 upto April, 2008 and thereafter he had worked as an unregistered contractor. He had raised various bills. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The head of department had not violated any of the provisions of the Act. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar project from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . .*OPP* .
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP* .
3. Whether the claim petition is not maintainable in the present form? . .*OPR* .
4. Whether the petitioner has no locus standi to file the case as alleged? . .*OPR* .
5. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR* .

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Deep Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of letter dated 13.11.1998 as Ex. PW1/C, copy of letter dated 17.2.1999 as Ex. PW1/D, copy of letter dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue as Ex. PW1/G, copy of proceeding dated 4.4.2009 as Ex. PW1/H, copy of Agreement as Ex. PW1/I, copy of office order dated 19.7.2010 as Ex. PW1/J, and copy of Seniority list as Ex. PW1/K. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of detail of the petitioner as Ex. RW1/C, copies of contingent bills and payment receipts as Ex. RW1/D to Ex. RW1/L, copy of Award as Ex. RW1/M, copy of order dated 20.3.2014 as Ex. RW1/N, copies of registration certificates as Ex. RW1/O to Ex. RW1/S, copies of Agreement deeds as Ex. RW1/T to Ex. RW1/Y.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS*Issues No. 1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Deep Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid worker is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster-roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster-roll. He also admitted that he had worked in various projects of different departments of the university and that Ex. PW1/B to Ex. PW1/F give a description of those projects. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

21. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2004. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2004 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

22. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

23. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/C is the copy of working detail of the petitioner.

26. Ex. RW1/D to Ex. RW1/L are the copies of contingent bills and payment receipts pertaining to the petitioner.

27. Ex. RW1/M is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

28. Ex. RW1/N is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

29. Ex. RW1/O is the copy of certificate of registration dated 29.1.2011.

30. Ex. RW1/P is the copy of certificate of registration dated 27.7.2011 relating to M/s Sun Security Services.

31. Ex.RW1/Q is the application for registration of establishments employing contract labour.

32. Ex.RW1/R is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial Escorts Services.

33. Ex.RW1/S is the copy of application for registration of establishments of employing contract labour.

34. Ex. RW1/T is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/U is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/V is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/W is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/X is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Y is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

41. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/C. It shows that the petitioner had worked from July, 2006 to 2008 on work individual contract basis and thereafter, worked as an unregistered contractor himself. Later, as per this document, he is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the

seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster-rolls with the petition. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex. RW1/D to Ex. RW1/L, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2004 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

42. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2004 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

43. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273**;

State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

44. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

45. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

46. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter as a contractor and later on under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

47. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

48. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order

as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 208/2014
Date of Institution : 05-5-2014
Date of Decision : 03-6-2019

Smt. Simro Devi w/o Shri Prakash Chand, r/o VPO Banuri, Tehsil Palampur, District Kangra, H.P. *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Simro Devi, w/o Shri Prakash Chand, r/o V.P.O. Banuri, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in

Tea Husbandry department *w.e.f.* April, 2000 and she continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2000 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010.

When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. She was engaged on work contract basis during April, 2003, for which she has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, her name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at her own will. She had worked on Individual Work Contractor basis/unregistered contractor from April, 2003 to January, 2009. She raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner herself had refused to work under the registered contractor during the year 2010. She only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on

the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Simro Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar

Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificate of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/I, copy of award dated 30.6.2014 as Ex. RW1/J, copy of order dated 20.3.2014 as Ex. RW1/K, copy of letter dated 29.1.2011 as Ex. RW1/L, copy of certificates of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license dated 27.7.2011 as Ex. RW1/O, copy of contract license dated 16.7.2014 as Ex. RW1/P, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Decided accordingly

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Yes

Issue No. 7 : Yes

Issue No. 8 : Yes

Issue No. 9 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Simro Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, she admitted that she has not filed any document showing her to be a daily wager. She also admitted that in the muster roll names of different categories of workers

are mentioned. She further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, she admitted that it does not bear her name. She also specifically admitted that her name also does not figure in the final seniority list, Ex.R-2. Though, she denied that she had not raised any objection regarding the seniority list and has volunteered to state that she had raised an objection with the VC, but she had to admit that no such document has been placed on record by her. It was also admitted by her that as per the policy of the Government, the persons who were engaged on muster-rolls have been regularized. She clearly admitted her signatures on Mark-RA-1 to Mark-RA-6 (now as Ex. RW1/D to Ex. RW1/I). She is working in the department on contingency. She denied that she is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen–Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2000 upto the year 2010, the petitioner had worked for 240 days in each year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/I are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/J is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/K is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/L is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/M is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/O is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/P is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/S is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/T is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which she had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that her name did not find mention in these seniority lists. No reason has been assigned by her as to why her name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, she claimed that an objection had been raised before the Vice Chancellor, but her such self serving statement is in air, as no document regarding the raising of objection against the seniority list has seen the light of the day. The petitioner clearly admitted that she had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner herself clearly admitted her signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/I. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that she

was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by her that she was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. No muster-roll in her name has been placed and exhibited on record by the petitioner. This only goes to show that she had never been engaged on the muster-roll. Further, the payment records Ex.RW1/D to Ex. RW1/I, nowhere reflect that the petitioner was a daily paid worker. She had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged in the year 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2000 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in her name. No muster-roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only her own statement in her favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, she is not entitled to any relief as claimed for by her. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref. No. : 189/2014

Date of Institution : 02-5-2014

Date of Decision : 03-6-2019

Smt. Pawna Devi w/o Shri Dharam Chand, r/o Village Molichak, P.O. Salyana, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Pawna Devi, w/o Shri Dharam Chand, r/o Village Molichak, P.O. Saliyana, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in Tea Husbandry department w.e.f. the year 2000 and she continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent w.e.f. March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year w.e.f. the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi

had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. She was engaged on work contract basis during November, 2003, for which she has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, her name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at her own will. She had worked on Individual Work Contractor basis/unregistered contractor from November, 2003 to January, 2009. She raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner herself had refused to work under the registered contractor during the year 2010. She only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the

petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Pawna Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statues of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy

of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificate of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/G, copy of award dated 30.6.2014 as Ex. RW1/J, copy of order dated 20.3.2014 as Ex. RW1/K, copy of letter dated 29.1.2011 as Ex. RW1/L, copy of certificates of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license dated 27.7.2011 as Ex. RW1/O, copy of contract license dated 16.7.2014 as Ex. RW1/P, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 :	No
Issue No. 2 :	No
Issue No. 3 :	Decided accordingly
Issue No. 4 :	Yes
Issue No. 5 :	Not pressed
Issue No. 6 :	Yes
Issue No. 7 :	Yes
Issue No. 8 :	Yes
Issue No. 9 :	Yes
Relief :	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Pawna Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, she admitted that she has not filed any document showing her to be a daily wager. She also admitted that in the muster roll names of different categories of workers are mentioned. She further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, she admitted that it does not bear her name. She also specifically admitted that her name also does not figure in the final seniority list, Ex.R-2. Though, she denied that she had not raised any objection regarding the seniority list and has volunteered to state that she had raised an objection with the VC, but she had to admit that no such document has been placed on record by her. It was also admitted by her that as per the policy of the Government, the persons who were engaged on muster-rolls have been regularized. She clearly admitted her signatures on Mark-RA-1 to Mark-RA-4 (now as Ex. RW1/D to Ex. RW1/G). She is working in the department on contingency. She denied that she is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen–Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as

per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2000 upto the year 2010, the petitioner had worked for 240 days in each year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/G are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/J is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/K is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/L is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/M is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/O is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/P is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/S is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/T is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which she had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that her name did not find mention in these seniority lists. No reason has been assigned by her as to why her name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, she claimed that an objection had been raised before the Vice Chancellor, but her such self serving statement is in air, as no document regarding the raising of objection against the seniority list has seen the light of the day. The petitioner clearly admitted that she had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all

the daily waged workers working with it. Then, the petitioner herself clearly admitted her signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/G. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that she was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by her that she was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster-rolls. No muster roll in her name has been placed and exhibited on record by the petitioner. This only goes to show that she had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/G, nowhere reflect that the petitioner was a daily paid worker. She had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged in the year 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2000 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in her name. No muster-roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only her own statement in her favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and***

Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L. Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, she is not entitled to any relief as claimed for by her. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of June, 2019.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref. No. : 14/2019
Date of Institution : 25-2-2019
Date of Decision : 04-06-2019

Shri Sohan Singh, General Secretary, Driver's Conductor's and Operational Staff Union, (Regd. No.399), HRTC Dharamshala, District Kangra, H.P. . *Petitioner.*

Versus

The Divisional Manager, HRTC, Dharamshala, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Petitioner (Sh. Sohan Singh) in person
For the Respondent : Respondent (Divisional Manager, HRTC) in person

AWARD/ORDER

The below given reference has been received from the appropriate Government for adjudication:

“Whether demand No.(i) raised by Shri Sohan Singh, General Secretary, Driver's Conductor's and Operational Staff Union, (Regd. No.399), HRTC Dharamshala, District Kangra, H.P. through demand notice dated 09-03-2010 (**copy enclosed**), to be fulfilled by the Divisional Manager, HRTC Dharamshala, District Kangra, H.P., is legal and justified? If yes, what monetary and other service benefits the concerned workers are entitled to from the above employer/management?”

2. The case is listed for today for the service of the petitioner but, however, Shri Sohan Singh (petitioner) has made the below given statement in the Court today:—

“ब्यान किया कि मैं यह case (Ref.14/109) को न चलाना चाहता हूँ। और यह केस वापिस लेता हूँ। दाखिल दफ्तर किया जावे।”

3. In view of the above statement made by Shri Sohan Singh, General Secretary, Driver's Conductor's and Operational Staff Union, the petitioner is not entitled to any relief as claimed by him. Therefore, the present claim petition is hereby dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

5. File after due completion be consigned to the records.

Announced in the open Court today this 4th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref. No. : 900/2016
Date of Institution : 24-12-2016
Date of Decision : 04-06-2019

Shri Pritam Singh s/o Shri Jai Singh, r/o Village Birth Chanalla, P.O. Bhallad, Tehsil Jawali, District Kangra, H.P. . *Petitioner.*

Versus

1. The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondent(s) : Sh. S.S. Kaundal, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Sh. Pritam Singh s/o Sh. Jai Singh r/o Village Birth Chanalla, P.O. Bhallad, Tehsil Jawali, Distt. Kangra, H.P. by the (1) Executive Engineer, H.P.P.W.D. Jawali, District Kangra, H.P., and (2) the Executive

Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during the year 1990 who had worked on daily wages as beldar and has raised his industrial dispute after more than 21 years *vide* demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis in the year 1980 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such till the year 1985. He had been re-engaged in the year 1987 and his services were illegally terminated by the respondents in the year 1990. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mates of the petitioner were S/Shri Kushal Singh, Kabli Ram, Som Dutt, Sukh Dev, Beli Ram and Naresh Kumar. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. Only respondent No.1 filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability and that the petition was bad on the grounds of delay and laches have been taken.

On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1980 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondent so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondent, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondent. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondent, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by respondent No.1.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:

1. Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pritam Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19.8.1998 as Ex. PW1/B, copy of letter dated 18.12.1999 as Ex. PW1/C, copy of notice dated 4.5.2002 as Ex. PW1/D, copy of resolution dated 18.7.2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G, copy of letter dated 18.1.2000 as Ex. PW1/H and copy of reply of O.A. No. 1045/90 alongwith the work detail of petitioner & others as Ex. PW1/I. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29.11.2010 as Ex. RW1/D, copy of letter dated 19.8.1998 as Ex. RW1/E, copy of application dated 18.12.1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18.1.2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Affirmative

Issue No. 2 : Affirmative

Issue No. 3 : Negative

Issue No. 4 : Not pressed

Relief : Claim petition partly allowed awarding lump sum compensation of Rs.1,75,000/- as per operative part of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Pritam Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/I.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification No. PBW-(A)-A(1)17/94. He also admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1980 uptil the year 1990. He denied that he had never worked for the period from the year 1980 uptil the year 1990. He further denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18.12.1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4.5.2002 regarding notice under Section 80 of CPC to The Secretary, H.P. Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18.7.2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18.1.2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. Ex. PW1/I is the copy of reply to the O.A. No.1045/1990 alongwith work detail of the petitioner and others.

20. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 uptil the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working

with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

21. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

22. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

23. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29.11.2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

24. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

25. Ex. RW1/C is the copy of Office Order dated 23.7.1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

26. Ex. RW1/D is the copy of another Office Order dated 29.11.2010 with regard to implementation of the award of this Court dated 22.12.2007.

27. Ex. RW1/E is the copy of letter dated 19.8.1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

28. Ex. RW1/F is the copy of letter dated 18.12.1999 regarding representation of Smt. Kusum Lata.

29. Ex. RW1/G is the copy of letter dated 18.1.2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

30. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

31. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

32. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

33. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1980 and that he had worked as such upto the year 1985, when he was illegally retrenched. It was also his case that his services were re-engaged in the year 1987 and thereafter had worked as such upto the year 1990. It was the stand taken by respondent no.1 that the petitioner had never been engaged by the department. It was suggested to the petitioner by the respondents that he had never been engaged as a daily waged beldar in the year 1980 and that he had never worked as such till the year 1990. He denied the fact. However, respondent No.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1985 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he had never worked in Jawali Division. His specific stand has been that he had worked in Nurpur Division. The petitioner has proved on record copy of reply filed by respondent No.1 in O.A. No.1045/1990, before the Hon'ble Administrative Tribunal, as Ex.PW1/I. In that O.A. the present respondent No.1, i.e. Executive Engineer, HPPWD Division Nurpur was arrayed as respondent No. 3. The present petitioner was also one of the applicants in the said O.A. and his name figured at serial No. 29. Reference in this regard can be made to Ex.PW1/I. It stands specifically pleaded by the present respondent No. 1 in the said reply before the Hon'ble Administrative Tribunal that the applicants (being 31 in number and in which the petitioner was also one of the applicants) were engaged on daily wage basis from different years as mates/beldars in Jawali Sub Division, as per the enclosed annexure-A. It is not disputed that earlier HPPWD Division was at Jasur and it was shifted to Jawali alongwith the sanctioned strength and staff in public interest vide notification dated 21st July, 1994. A copy of such notification has been placed on record by respondent no.1 as Ex.RW1/B. A glance at this notification would reveal that the Division which was renamed as Jawali Division consisted of four Sub Divisions, of which Jawali Sub Division was one of them. Manifest that earlier Jawali Sub Division was under HPPWD Division Jasur. As per the copy of annexure annexed with the copy of reply Ex.PW1/I, the petitioner, whose name figures at serial No. 29 had continuously worked in Jawali Sub Division from the year 1979 upto the year 1990. This document, which is an admitted document on the part of the respondents, would belie their stand that the petitioner had never worked with the department. Faced with the situation, it was contended that the petitioner while under cross-examination had categorically admitted that he had never worked in Jawali Division. This admission would not help the respondents in any way for the reason that Jawali Division only came into existence in July, 1994 and earlier to it, Jawali was merely a Sub-Division. The petitioner, as per the reference had been terminated during the year 1990.

34. It was contended by the learned Deputy District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

35. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

36. Applying the principles laid down in the above case by the Hon'ble Supreme Court, the evidence produced has to be looked into. The respondents claimed that the petitioner did not

work for 240 days. The petitioner was a workman hired on a daily waged basis. So, it is obvious that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in my humble opinion the burden of proof shifts to the employers/respondents to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. Be it recorded here that as per the copy of annexure, which is annexed with the copy of reply Ex.PW1/I, the petitioner had initially been engaged in year 1979 as a daily wager and he had worked upto the year 1990. As per the reference the services of the petitioner were terminated in the year 1990. It was the contention of the respondents that they had neither engaged nor terminated the services of the petitioner. However, the plea of the respondents that the petitioner had never been engaged by the department, has already been negated by me above. As per the annexure annexed with Ex.PW1/I, the petitioner had worked for 122 days in the year 1979, 280 days in the year 1980, 26½ days in the year 1981, 300 days in the year 1982, 263 days in the year 1983, 347 days in the year 1984, 255 days in the year 1985, 262 days in the year 1986, 342 days in the year 1987, 274 days in the year 1988 and 342 days in the year 1989. Thus, in his total service for a period of eleven years from the year 1979 till the year 1989, he had only worked for 2813½ days. Be it recorded here that the petitioner had worked for more than 240 days preceding twelve calendar months from the year of his termination, which is stated in the reference as 1990. Therefore, during a period of twelve calendar months anterior to the date of termination, the petitioner had actually worked under the employer for not less than 240 days, so as to meet the requirement of law of having continuous service of one year, as provided under Section 25-B of the Act. Thus, it was required of the respondents to have issued one month's notice in writing to the petitioner indicating the reasons for retrenchment, prior to his termination. It is not the case of the respondents that any such notice had been served upon the petitioner or any retrenchment compensation had been paid to him. So, it can be said that the petitioner's service was terminated without complying with the provisions of Section 25-F of the Act.

37. Section 25-N of the Act provides for the procedure for retrenchment. The said Section reads:

“25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”*

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the

genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

.....

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.....”

38. Admittedly, no notice as provided under Section 25-N (a) of the Act was served upon the petitioner, nor any prior permission of the appropriate Government or such authority as specified by the Government by a notification in the Official Gazette had been obtained by the respondents, as provided under Section 25-N (b) of the Act. So, it can be said that the services of the petitioner had also been terminated without complying with the provisions of Section 25-N of the Act.

39. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Pritam Singh (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent No.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

40. So far as the case of Smt. Kusum Lata is concerned, she had been transferred from Dalhousie Sub Division on request and had been posted in Suliali Sub Division and thereafter under Nurpur Division. She at no point of time had worked in Jasur Division or thereafter in Jawali Division, which was created in the year 1994. Therefore, it cannot be said that the respondents had violated the principle of ‘last come first go’, as envisaged in Section 25-G of the Act.

41. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

42. While testifying in the Court as PW1, the petitioner has given his age as 54 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. He also admitted that he is also doing the days’ drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

43. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

44. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors.**, 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

45. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai** 2019 (160) FLR 651, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal** (2014) 7 SCC 177 and **District Development Officer & another vs. Satish Kantilal Amerelia** 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar**, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about eleven years and actually worked for 2813½ days as per mandays chart on record and that his services were disengaged in the year 1990, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about **twenty one years** i.e. demand notice was given on 29.11.2012. The petitioner on the date of filing the claim petition was aged about 53 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

46. In view the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,75,000/- (Rupees one lakh seventy five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered in the affirmative and in favour of the petitioner, while issue No. 4 is answered in the negative and against the respondents.

Issue No. 3 :

47. Not pressed.

Relief :

48. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondents are hereby directed to pay a compensation of ₹1,75,000/- (Rupees one lakh seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 766/2016

Date of Institution : 19-11-2016

Date of Decision : 06-6-2019

Shri Pappu Ram s/o Shri Beli Ram, r/o Village Pathkan, P.O. Dehar, Tehsil Sunder Nagar,
District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, Sunder Nagar Division, H.P.P.W.D., Sunder Nagar, District
Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Pappu Ram s/o Shri Beli Ram, r/o Village Pathkan, P.O. Dehar, Tehsil Sunder Nagar, District Mandi, H.P. during December, 1998 by the Executive Engineer, H.P.P.W.D. Division, Sunder Nagar, District Mandi, H.P., who had worked as daily wages beldar and has raised his industrial dispute after more than 13 years *vide* demand notice dated 16.11.2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily waged beldar by the respondent in the year 1995 and thereafter he worked continuously without any break till the year 1998. His services were orally dispensed with by the respondent in the month of December, 1998. He had approached the respondent time and again for his re-engagement, but without success. Fictional breaks were intentionally given to him by the respondent, so that he could not complete 240 days in any year. A number of juniors, as detailed in para 04 of the petition, were retained by the respondent. Even new/fresh hands were engaged by the respondent after the retrenchment of the petitioner. No opportunity of re-engagement was ever given to the petitioner. The action of the respondent is stated to be in violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner had only worked intermittently for 169 days in the year 1998 and that he had left the job of his own sweet will, without intimating the department. He had never continuously worked for 240 days in any calendar year and had left the job in January, 1999. He thereafter had never approached the respondent/department. The services of the petitioner had never been terminated by the respondent. No representations were ever made by the petitioner to the respondent. No fictional breaks were given to the petitioner. His demand for re-engagement at a belated stage cannot be accepted. Only those workers were regularized by the respondent, who had continuously worked and had fulfilled the criteria of the Government policy for regularization. Some workers were engaged on compassionate grounds and also as per the orders of the Court. The respondent had not violated any of the provisions of the Act. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 30.3.2017:

1. Whether termination of services of the claimant/petitioner by respondent during December, 1998 and his industrial dispute vide demand notice dated 16.11.2012 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches. If so, its effect? . . .*OPR*.

Relief :

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pappu Ram appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of seniority list of workers as Ex. PW1/B and copy of judgment dated 18.10.2014 as EX.PW1/C. The respondent examined one Shri D.R. Chauhan as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. RW1/B and copy of seniority list as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3 : Not pressed

Issue No.4 : No

Relief : Petition is partly allowed awarding lump sum compensation of ₹ 25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Pappu Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had worked in the department from the year 1995 upto the year 1998. He denied that he was never kept at work in the year 1995 and that he had only worked with the respondent in the year 1998. He further denied that he had only worked for 169 days and had never completed 240 days or more in any year. He also denied that he had left the job of his own in December, 1998. Further, it was denied that he was never removed from work by the department. He admitted that he had raised a demand notice in November, 2012. He denied that no junior to him had been retained by the respondent and that only those persons were regularized, who had fulfilled the conditions of the Government policy. He owns about 1 bigha of land, which he cultivates. He denied that he has making a phoney statement.

11. Ex.PW1/B is the copy of seniority list of workers of HPPWD Division Sunder Nagar, District Mandi, H.P. relating to Shri Sunder Ram and others.

12. Ex.PW1/C is the copy of judgment dated 18.10.2014 passed in CWP No.2261/2014 by the Hon'ble High Court of Himachal Pradesh.

13. Conversely, Shri D.R. Chauhan, Executive Engineer, HPPWD Division, Sunder Nagar, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the seniority list Ex. PW1/B had been issued by their office. He feigned ignorance that a detail of the juniors, who have been kept at work, is there in this list. Volunteered that, there is no date of initial engagement mentioned in it. He specifically denied that before keeping juniors at work, after the year 1998, no notice was issued to the petitioner for being re-engaged. He admitted that no retrenchment compensation had been paid. He clearly denied that fictional breaks had intentionally been given to the petitioner so that he could not work for 240 days or more. He categorically admitted that as per the record no notice under Section 25-F of the Act had been given to the petitioner. They had never removed the petitioner from work. Self stated that, he himself had left the job. They had never charge-sheeted the petitioner. He admitted that there was no correspondence with the petitioner for his returning back to work.

14. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of combined seniority list relating to Shri Sher Singh and others.

16. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1995 and that he had worked as such upto the year 1998. The respondent took the stand that the petitioner had only worked as a daily waged beldar for 169 days in the year 1998. Although, the petitioner (PW1) in his cross-examination denied the fact that he had only worked for 169 days in the year 1998, but placed on record by the respondent is the mandays chart pertaining to the petitioner as Ex. RW1/B. It reveals that the services of the petitioner had been engaged by the respondent in the month of June, 1998 as a daily waged beldar and he had only worked as such upto December, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that he was appointed by the respondent in the year 1995, as claimed by him.

17. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In ***Eagle Hunter Solutions Ltd. vs. Sh.***

Prem Chand reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Shri D. R. Chauhan (RW1) clearly admitted that the petitioner had never been charge-sheeted. Thus, the plea of abandonment put forth by the respondent/employer is not established.

18. From the mandays chart Ex. RW1/B, it becomes clear that the petitioner had not completed 240 days of service in twelve calendar months preceding his year of retrenchment *i.e.* 1998. Therefore, it cannot be said that he was in "continuous service for not less than one year" under the employer and the provisions of Section 25-F of the Act will not augur for the benefit of the petitioner.

19. Ex. PW1/B is the seniority list of workers of HPPWD Division Sunder Nagar. It is admitted by Shri D. R. Chauhan (RW1) that this seniority list has been issued by their office. Ex. RW1/C is the combined seniority list of daily waged beldars. It is an admitted document on the part of the respondent. From this document, it is clear that the services of the persons whose names figure from serial No. 37 to 105, were re-engaged/engaged in the years 1999 to 2003, 2006, 2008 and 2009, either on Court orders or on compassionate grounds. The dates of initial engagement of those persons who were re-engaged as per Court orders have not come on the file. The dates of deaths of the husbands or parents of those persons, who were appointed on compassionate grounds, have also not come on record. It is nowhere the case of the respondent that such persons are not serving the respondent/department. Admittedly, their services were engaged after the engagement of the services of the petitioner. The years of engagement of such persons are shown to be from the year 1999 onwards upto the year 2009. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is June, 1998. There is nothing on record to show that the persons who were re-engaged as per Court orders and that the deceased parents and husbands of those persons who were appointed on compassionate grounds were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. It is an admitted case of the respondent (RW1) that no opportunity of re-employment was given to the petitioner. Thus, the respondent has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

20. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the respondent on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the services. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

21. Such being the situation, I have no hesitation to conclude that the respondent had contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

22. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

23. The learned Deputy District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

25. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years

of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three months and actually worked for 169 days as per mandays chart on record and that his services were disengaged in December, 1998, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than *thirteen years* i.e. demand notice was given on 16.11.2012. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 36 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is decided against the respondent and in favour of the petitioner.

Issue No. 3 :

27. Not pressed.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of `25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. :	214/2015
Date of Institution :	25-5-2015
Date of Decision :	06-06-2019

Shri Dole Ram s/o Shri Het Ram, r/o Village Khaneyag, P.O., Tehsil Nihri, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, I & PH Division, Karsog, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Deepak Azad, Adv.

For the Respondent : Sh. S.S. Kaundal, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Dole Ram s/o Shri Het Ram, r/o Village Khaneyag, P.O. and Tehsil Nihri, District Mandi, H.P. before the Executive Engineer, I.&P.H. Division, Karsog, District Mandi, H.P. *vide* demand notice dated 26.03.2007 regarding his illegal termination of service *w.e.f.* 01.07.1999 suffers from delay and laches? If not, Whether termination of the services of Shri Dole Ram s/o Shri Het Ram, r/o Village Khaneyag, P.O. and Tehsil Nihri, District Mandi, H.P. *w.e.f.* 01.07.1999 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially appointed as a daily waged beldar in the year 1991 and had worked as such upto the year 2000. However, thereafter his services were verbally terminated by the respondent without any reason and without serving a prior notice upon to him, as required under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). It is alleged that S/Shri Desh Raj, Kuldeep, Dharam Pal, Khem Raj, Sita Ram, Brij Lal, Salig Ram, Hem Raj and Inder Singh, who were junior to the petitioner had been regularized. Due to his illegal termination, the petitioner had raised an industrial dispute by serving a demand notice, but it was answered against him on 27.3.2012. A writ petition was then filed by him, which was disposed of with the direction to the Labour Commissioner to consider the averments made and thereafter to refer the matter to this Court. No re-engagement letter had ever been served upon the petitioner. The act of the respondent amounted to unfair labour practice. Prior to his termination, neither any notice had been served, nor he had ever been charge-sheeted by the respondent. Juniors are still serving the respondent and the petitioner had been ousted on a pick and choose policy. The principle of ‘last come first go’ had not been adhered to. His termination is arbitrary, unconstitutional and against the principle of natural justice. The petitioner is unemployed since the date of his termination and sufficient work was available with the respondent. He had worked for more than 240 days from the year 1991 upto the year 2000. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner had worked

intermittently *w.e.f.* 1/1993 to 6/1999. He had abandoned the work of his own. He had worked for 71 days from 1.1.1993 to 31.3.1993, had not worked from the year 1994 to the year 1997, had worked for 74 days from 1.8.1998 to 31.10.1998 and for 128 days *w.e.f.* 16.1.1999 to 30.6.1999. He had raised an industrial dispute after lapse of about eight years. The persons mentioned in the statement of claim had worked continuously and had been regularized as per the policy of the Government. The petitioner had never completed 240 days in any calendar year. He had never been terminated by the respondent, rather he had abandoned the work in June, 1999. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 29.3.2016:

1. Whether the industrial dispute raised by the petitioner *vide* a demand notice dated 26.3.2007 qua his termination of his service *w.e.f.* 01.07.1999 by respondent suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent *w.e.f.* 01.07.1999 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue No. 1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
5. Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dole Ram appeared as PW1. The respondent examined one Shri N.P. Parmar who tendered his statement by way of affidavit Ex. RW1/A, copy of mandays chart Ex. RW1/B and copy of mandays of workers as Ex.RW1/C.

7. Arguments of the learned counsel for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Affirmative

Issue No. 3 : Affirmative

Issue No. 4 : Not pressed

Relief. : Petition is partly allowed awarding lump sum compensation of `30,000/- per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Dole Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he was engaged for work in January, 1993. He denied that he had only worked for three months in the year 1993 and thereafter had abandoned the work. He also denied that from April, 1993 upto July, 1998 he had not worked with the department. He admitted that he had come to the department to work in August, 1998. He denied that he had only worked upto June, 1999. Volunteered that, he had worked upto the year 2000. He specifically denied that he had not done any work in the year 2000. He admitted that he had raised a demand notice in the year 2007. He categorically denied that from the year 1997 upto the year 2007 he had never made any representation. Further, he denied that no junior had been kept at work. He admitted that he had not completed 240 days in any year. He denied that he had never been removed from work by the department, nor he had been given any breaks. He admitted that he owns land, which he cultivates. He denied that he is given a phoney statement.

11. Conversely, Shri N. P. Parmar, Executive Engineer, I&PH Division, Karsog (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that he was posted as Executive Engineer, I&PH Division, Karsog since February, 2018. He denied that the petitioner had been removed from work by the department. He admitted that as per the record no notice had been served upon the petitioner. He also admitted that S/Shri Desh Raj, Chaman Lal and Brij Lal, who are juniors to the petitioner, are still working with the department. Further, he admitted that no retrenchment compensation had been paid to the petitioner. Volunteered that, they had never disengaged the petitioner. He specifically denied that fictional breaks had been given to the petitioner intentionally by the department. He also denied that the petitioner had worked for more than 240 days in a year.

12. Ex.RW1/B is the mandays chart relating to the petitioner.

13. Ex.RW1/C is the copy of year-wise mandays chart relating to Shri Desh Raj and others.

14. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in January, 1993 by the respondent.

15. As per the mandays chart Ex. RW1/B, the petitioner had worked for 71 days in the year 1993, 74 days in the year 1998 and 128 days in the year 1999. Thus, in his total service for a period of three years, he had only worked for 273 days. Be it recorded here that the petitioner had not worked for more than 240 days preceding 12 calendar months from the date of his termination, which as per the reference had taken place on 1.7.1999. Since, there is no reference received from the Labour Commissioner on the point of artificial breaks, this Court is to confine its findings only

with regard to the alleged illegal termination. It is established on record that the petitioner had not worked for 240 days preceding 12 calendar months from the date of his termination. It is evident from the mandays chart that from January, 1993 upto June, 1999, the petitioner had only worked for 273 days. Therefore, immediately in the preceding 12 calendar months from the month of termination, petitioner had not worked for 240 days, so as to meet the requirement of law of having a continuous service of one year. Thus, it was not required of the respondent to have issued a notice as provided under Section 25-F of the Act. So, it can safely be held that the respondent had not violated the provisions of Section 25-F of the Act, as claimed by the petitioner.

16. A plea was taken by the respondent that the petitioner was an intermittent worker. He had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondent/employer is not established.

17. Ex.RW1/C is the copy of year-wise mandays chart relating to S/Shri Desh Raj, Chaman Lal and Brij Lal. It reveals that S/Shri Chaman Lal and Brij Lal were appointed by the respondent in the year 1998. It stands clearly admitted by Shri N.P. Parmar (RW1) in his cross-examination that both the above named persons are still serving in the department. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex.RW1/B is January, 1993. There is nothing on record to show that both the above named persons were senior to the petitioner. Rather, it has come in the substantive evidence of the respondent (RW1) that they both are juniors to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair practice.

18. It is also apparent from Ex.RW1/C i.e. year-wise mandays chart that the services of Shri Desh Raj were engaged by the respondent in the year 2000. As per the reference, the services of the petitioner stood terminated on 1.7.1999. This indicates that new/fresh hand was engaged by the respondent. It was categorically admitted by the respondent that said Shri Desh Raj is at present serving the department. It was claimed by the respondent that the petitioner had himself abandoned the work. However, such allegation of the respondent has already been negated by me above. There is nothing on the file to establish that at the time of engaging new/fresh hand or retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

19. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

20. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and cultivates the same. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

21. The learned Deputy District Attorney for the respondent contended that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as *Liaq Ram vs. State of H.P. and ors.*, 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

23. In case titled as *Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh* reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as *Deputy Executive Engineer vs. Kuberbhai Kanjibhai* 2019 (160) FLR 651, by relying upon the cases of *Bharat Sanchar Nigam Limited vs. Bhurumal* (2014) 7 SCC 177 and *District Development Officer & another vs. Satish Kantilal Amerelia* 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as *State of Uttarakhand & Anr. vs. Raj Kumar*, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three years and had actually worked for 273 days as per mandays chart on record and that his services were disengaged in July, 1999, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about *eight years* i.e. demand notice was given on 26.3.2007. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 39 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

24. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `30,000/- (Rupees thirty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 2 and 3 are answered in the affirmative, while issue No.1 is answered in the negative.

Issue No. 3 :

25. Not pressed.

Relief :

26. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹30,000/- (Rupees thirty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. :	249/2014
Date of Institution :	22-7-2014
Date of Decision :	07-06-2019

Shri Uma Chand s/o Late Shri Neel Kanth, r/o Village Banon, P.O. Jassal, Tehsil Karsog,
District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Karsog, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O. P. Verma, Adv.

For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services as Beldar of Sh. Uma Chand s/o Sh. Neel Kanth, Village Manaon, P.O. Jassal, Tehsil Karsog, District Mandi, H.P. by the Executive Engineer, HPPWD Division Karsog, District Mandi, (H.P.) during April, 1993 to March, 1995 and finally during April/May, 1995 without following the mandatory provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as set out in the statement of claim is that his services were engaged by the respondent on muster roll basis in the year 1993 in HPPWD Sub Division Churag, Division Karsog, District Mandi, H.P. He had worked sincerely upto the satisfaction of his superiors during the period from the year 1993 upto 1998. His services were terminated due to non-availability of work. However, he was assured by the respondent that as per the availability of work, he would be re-engaged. The respondent had not adhered to the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice and retrenchment compensation had been paid to him. Persons junior to him, namely, S/Sh. Narad, Keshav Ram, Kehm Chand, Keshav Ram and Nokh Ram were allowed to continue and their services have been regularized. After the retrenchment of the petitioner, new/fresh hands have been engaged by the respondent. He had visited the respondent’s office many a times for his re-engagement, but without success. He is unemployed. The respondent has not complied with the provisions of Sections of 25-F, 25-G and 25-H of the Act. The petitioner had filed an O.A. before the Hon’ble Administrative Tribunal, which was disposed of by the Hon’ble Tribunal on the point of jurisdiction. Due to his illegal termination, the petitioner had raised an industrial dispute before the Labour Officer, Mandi regarding his illegal termination, but of no avail. A writ petition was then filed by him, which was disposed of with the direction to the Labour Commissioner to consider the averments made and thereafter to refer the matter to the Court. He had completed 240 days in each calendar year. His termination from service was totally illegal, unjust and against the mandatory provisions of the Act, as well as against the principle of natural justice, hence amounts to unfair labour practice. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner had worked intermittently with the department *w.e.f.* the year 1993 upto the year 1995. It was specifically denied that the petitioner had worked continuously from the year 1993 upto the year 1998. He had only worked for 68 days in the year 1995 and thereafter had left the work of his own sweet will, without prior intimation to the department. On the budget being exhausted, the labour working on Mahota-Bagshar road was shifted to Tattapani Pandar road, where the budget was available. The petitioner had not gone there and had abandoned the work. No notice was required to be served, nor any retrenchment compensation was to be paid to the petitioner, as he had been re-engaged by the

department in November, 1997, and he had worked for 40 days and had again left the work. He was then re-engaged in June, 1998 and had worked upto August, 1998. He again had left the work without prior intimation to the department. He had not completed 240 days in any calendar year. No junior to him had ever been engaged by the respondent. The services of the petitioner had never been terminated by the department. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. No rejoinder was filed.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 26.4.2016:

1. Whether time to time termination of the services of the petitioner during April, 1993 to March, 1995 by the respondent is illegal and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of the petitioner by the respondent during April/May, 1995 is illegal and unjustified as alleged? . . .*OPP*.
3. If issue No. 1 & issue No.2 are proved in affirmative, to what relief petitioner is entitled to? . . .*OPP*.
4. Whether the present claim petition/reference is not maintainable in the present form as alleged? . . .*OPR*.
5. Whether the claim petition is bad on ground of delay and laches as alleged. If so, its effect? . . .*OPR*.

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Uma Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of order dated 20.3.2006 as Ex.PW1/B and copy of order dated 14.3.2014 as Ex.PW1/C. The respondent examined one Shri Man Singh, who tendered his statement by way of affidavit Ex. RW1/A, copy of monthly work details as Ex.RW1/B, copies of mandays charts of Shri Nardu and others as Ex.RW1/C to Ex.RW1/G.

7. Arguments of the learned Authorized Representative for the petitioner and Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Negative

Issue No. 4 : Not pressed

Issue No. 5 : No

Relief : Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Uma Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he had been kept at work in the month of April, 1993 by the department. He also admitted that he had even worked with the department after the month of March, 1995. A correct detail of his work has been given by the department. He denied that he was an intermittent worker and had been leaving the work of his own. He admitted that he had worked with the department on Mahota- Bagsar road. He also admitted that when the work of the aforesaid road was complete, the workers had been sent for work on Tatapani-Pandar road. He denied that he had not gone there to work and had abandoned the job. It was also admitted by him that when the budget for Mahota-Bagsar road was again granted, he had worked there in the year 1997-98. He clearly admitted that as his co-workers were regularly attending the work, so they had completed 240 days and more. He specifically denied that no fictional breaks were ever given to him by the department. He owns land, which he cultivates. He denied that he is making a phoney statement.

11. Ex. PW1/B is the copy of order dated 20.3.2006 passed in O.A. No. 3738/2003 by the Hon'ble Administrative Tribunal.

12. Ex. PW1/C is the copy of judgment dated 14.3.2014 passed by the Hon'ble High Court of Himachal Pradesh in CWP No. 9696/2013.

13. Conversely, Shri Man Singh, Executive Engineer, HPPWD, Karsog, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1993. He denied that the petitioner had worked upto the year 1998. He also denied that when they had removed the petitioner in the year 1998, he was assured to be taken back on work. Further, he denied that after terminating the services of the petitioner, S/Shri Nardu, Keshav and Nokhu had been kept at work. Volunteered that, they had been kept at work on different roads. He admitted that when the petitioner had left the work, no notice was given to him. Self stated that he had been asked orally, but he refused to return back on work. He specifically denied that the petitioner had been visiting the department time and again for work, be he was not kept at work. He feigned ignorance that the petitioner is illiterate and poor. He was also not aware that since the petitioner left the work, he is unemployed. He denied that they had intentionally removed the petitioner.

14. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

15. Ex. RW1/C to Ex. RW1/G are the copies of year-wise detail of mandays in respect of Sh. Nardu and others.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. Placed on record by the respondent is mandays chart Ex. RW1/B of the petitioner. This mandays chart is not in dispute. Its perusal disclosed that the services of the petitioner were initially engaged by the respondent in the month of April, 1993 and he had worked intermittently with the respondent/department upto the year 1998. Since, the petitioner had worked with the respondent even after April/May, 1995, the question of final termination of his service by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

17. Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in the year 1998, as claimed in the statement of claim and the ocular evidence led on record by the petitioner. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court, being beyond the terms of the reference.

18. Now, the question as to whether artificial breaks in service were given to the petitioner by the respondent during April, 1993 to March, 1995 or not?

19. To my thinking, the answer to this query is in the negative. The mandays chart Ex. RW1/B clarifies that in the year 1994, the petitioner had worked with the respondent for 276 days. Meaning thereby that the employer/respondent, who was duty bound under Section 25-B of the Act to provide the work for 240 days in a period of twelve calendar months to the employee/petitioner, had in fact provided such work to the petitioner in the year 1994. So, the question of fictional breaks being provided to him in the aforesaid year by the respondent does not arise at all. In the year 1993, the petitioner had only worked for 149 days, while in the year 1995, he had worked for less than 100 days, *i.e.* for a total of 60 days. No explanation is forthcoming on behalf of the petitioner as to why he had served the respondent only for 149 days in the year 1993 and for less than 100 days in the year 1995. While under cross-examination the petitioner categorically admitted that as his co-workers were regularly reporting for work, they could complete work for 240 days or more. The respondent has categorically pleaded and stated that the petitioner was an intermittent worker, who used to work as per his own convenience and sweet will. Taking into account the working pattern of the petitioner, by no stretch of imagination, it can be said that artificial breaks in service were provided to him by the respondent, as alleged. The petitioner cannot be allowed to take advantage of his own wrongs. If intentional breaks were given to him then, why he did not agitate the said fact earlier or at the time of the receipt of payment for the working days put in by him and for which he was shown present? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. The fact that the petitioner remained tight lipped and complacent about his rights for a long period as well as received the payments without any protest speaks volumes about the truthfulness and veracity of his claim. The act and conduct of the petitioner is noxious to his cause. Simply because no show cause notice was issued to the petitioner by the respondent for his willful absence from duty from time to time or no disciplinary proceedings were initiated against him by the respondent/employer, the same will not come to his rescue taking into consideration the facts narrated above.

20. Such being the situation, I have no hesitation to conclude that no artificial/fictional breaks were provided to the petitioner by the respondent. He is not entitled to such relief.

21. These issues are accordingly decided in the negative and against the petitioner.
Issue No. 4 :

22. Not pressed.

Issue No. 5 :

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in the negative and against the respondent.

Relief :

25. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 7th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 627/2016
Date of Institution : 01-9-2016
Date of Decision : 12-6-2019

Shri Surender Kumar s/o Shri Bhagat Ram, r/o Village Kuffa, P.O. Killar, Tehsil Pangi,
District Chamba, H.P. . Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, (Pangi), Tehsil Pangi, District Chamba, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.
For the Respondent(s) : Sh. Udhay Singh, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Surender Kumar s/o Shri Bhagat Ram, r/o Village Kuffa, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during year, 2004 by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P., who had worked on daily wages and has raised his industrial dispute after about 8 years *vide* demand notice dated 26.11.2012, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of after about 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis without any appointment letter, in the year 1994. He continuously worked with intermittent breaks upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Sher Singh, Gurdev, Man Dei, Balwant, Dila Ram, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1994 and that he had continuously worked with intermittent breaks upto September, 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 12.6.2018:

1. Whether termination of service of petitioner by the respondent during year 2004 is/was legal and justified as alleged? . . . *OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Negative

Issue No. 3 : No

Issue No. 4 : No

Relief. : Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in September, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1994 and had continuously worked as such till the year 2004. It was also his claim that notional breaks were given to him by the department from the year 1994 upto the year 2004 so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary

evidence, as the respondent has disputed that the petitioner was ever engaged by the department as a daily waged beldar.

11. Then, it was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof lay on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon’ble Supreme Court, as this statement of claim pertains to the tribal area of Pangi Sub-Division of Chamba District, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

15. The petitioner in paragraph 10 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri/Smt. Sher Singh, Gurdev, Man Dei, Balwant, Dila Ram, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT CHAMBA)

Ref. No. : 384/2016

Date of Institution : 01-6-2016

Date of Decision : 12-6-2019

Shri Laxmi Chand s/o Shri Kishna, r/o Village Kulal, P.O. Kulal, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, (Pangi), Tehsil Pangi, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. O.P. Bhardwaj, Adv.

For the Respondent(s) : Sh. Udhay Singh, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Laxmi Chand s/o Shri Kishna, r/o Village Kulal, P.O. Kulal, Tehsil Pangi, District Chamba, H.P., during year 2004 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) Tehsil Pangi, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated nil received in the Labour Office on 08/05/2013 after lapse of 9 years. If not, keeping in view delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim, is that he was appointed as daily waged beldar on muster roll basis without any appointment letter, in the year 1980. He continuously worked with intermittent breaks upto September, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, the persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Gurdev, Man Dei, Sher Singh, Balwant, Dila Ram, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The

contents of the petition were denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1980 and that he had continuously worked with intermittent breaks upto September, 2004. It was asserted that the petitioner had never been engaged by the respondent to do any work. In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 12.6.2018:

1. Whether termination of service of petitioner by the respondent during year, 2004 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Deputy District Attorney, as per his statement made at bar did not want to lead any evidence on behalf of the respondent.

7. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 :	Yes
Issue No.2 :	Negative
Issue No.3 :	No
Issue No.4 :	No
Relief. :	Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No. 1 to 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in September, 2004 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the year 1980 and had continuously worked as such till the year 2004. It was also his claim that notional breaks were given to him by the department from the year 1980 upto the year 2004 so that he could not complete 160 days, as specified for the tribal area of Pangi Sub-Division of Chamba District, instead of 240 days as envisaged under Section 25-B of the Act. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work without any breaks and who had completed 160 days from the dates of their initial engagement. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as the respondent has disputed that the petitioner was ever engaged by the department as a daily waged beldar.

11. Then, it was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 160 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 160 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

12. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof lay on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

13. Applying the principles laid down in the above case by the Hon'ble Supreme Court, as this statement of claim pertains to the tribal area of Pangi Sub-Division of Chamba District, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

15. The petitioner in paragraph 10 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Shri/Smt. Gurdev, Man Dei, Sher Singh, Balwant, Dila Ram, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar, who were junior to him, were retained in service by the respondent. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/department. Therefore, it cannot be held that the respondent had violated the provisions of Section 25-G of the Act.

16. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

17. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No.3

18. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

19. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.) CAMP AT
CHAMBA)**

Ref. No. : 60/2016

Date of Institution : 20-2-2016

Date of Decision : 12-06-2019

Smt. Bib Devi d/o Shri Natha Ram, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Killar Division, (Pangi), District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Udhay Singh, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Ms. Bib Dei d/o Shri Natha Ram, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 03-01-2012 regarding her alleged illegal termination of services during year 1995 suffers from delay and latches? If not, Whether termination of services of Ms. Bib Dei d/o Shri Natha Ram, r/o Village Mahaliyat, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during year, 1995, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter in the year 1993. She continuously worked with intermittent breaks upto October, 1995 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of

the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri Suraj Ram, Chuku Ram, Budhi Ram and Dev Raj. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition was denied on merits. It has been denied that the services of the petitioner were engaged by the respondent as a daily waged beldar on muster roll basis during the year 1993 and that she had continuously worked with intermittent breaks upto the year 1995. It was asserted that the petitioner had never been engaged by the respondent to do any work. In these circumstances, the respondent prayed that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 12.12.2018:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 03-01-2012 qua her termination of service during year, 1995 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent during year, 1995 is/was legal and justified as alleged? . . .*OPP.*
3. If issue No. 1 or issue No. 2 are proved in affirmative, to what service benefits petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely Ms. Bib Dei appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of demand notice as Ex.PW1/B and copy of seniority list Ex. PW1/C. The respondent examined one Shri Rajeev Kumar, who tendered his statement by way of affidavit Ex. RW1/A, copy of seniority list as Ex.RW1/B and copy of mandays chart as Ex.RW1/C.

7. Arguments of the learned counsel for the petitioner and learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 :	No
Issue No. 2 :	Yes

Issue No. 3 :	Negative
Issue No. 4 :	Not pressed
Relief. :	Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 2 and 3 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Ms. Bib Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that neither she had been kept at work, nor had worked for the department. Volunteered that, she had worked in the department from the year 1993 upto the year 1995. However, she had to admit that she could not produce any record showing her to have worked in the department.

11. Ex. PW1/B is the copy of demand notice pertaining to the petitioner.

12. Ex. PW1/C is the copy of seniority list relating to Shri Tek Chand and others.

13. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent. In the cross-examination, he denied that the petitioner had worked with the respondent from the year 1994 upto the year 1995. He also denied that the mandays Ex.RW1/C is incorrect. Further, he denied that the department had retained juniors to the petitioner.

14. Ex. RW1/B is the mandays chart relating Shri Suraj Ram and others.

15. Ex. RW1/C is the mandays chart relating to the petitioner.

16. The version of the petitioner is that her services were engaged as a daily waged beldar by the respondent in the year 1993 and that she had worked as such till the year 1995. It was the stand taken by the respondent that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in her cross-examination denied the fact that she had never been engaged as a daily waged beldar in the year 1993 by the respondent and that she had not worked as such upto the year, 1995 but, however, the respondent has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/C. Its perusal reveals that the petitioner had never worked with the respondent even for a single day from the year 1996 upto the year 2000. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Significantly, the petitioner neither in her pleadings, nor in her ocular evidence has stated the date and month in which she was engaged by the respondent. There is also no pleading or evidence to the effect as to on which specific date and month her services stood terminated by the respondent. Only the years of joining and termination of the petitioner stand specified in the statement of claim

and her statement by way of affidavit Ex. PW1/A. No other witness was examined by the petitioner from HPPWD, Division, Killar, who had seen her working as a daily waged beldar with the respondent. Then, it is nowhere the case of the petitioner that she had ever marked her attendance in all those 03 years, the period for which she claims to have worked with the respondent. Had there been any attendance register in which the petitioner had appended her signatures, she ought to have placed and exhibited on record the same so as to show that her services had been engaged by the respondent from the year 1993 upto the year 1995. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondent during the pendency of this case. Further, the petitioner herself claims that she had been engaged as a daily waged beldar on muster roll basis. She could have proved the muster-rolls for the period for which she had worked. But, no such muster-roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondent, has been placed on record by her.

17. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondent.

18. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondent can also not be held to have violated the provisions of Sections 25-G and 25-H of the Act, as the relationship of the petitioner and the respondent being that of a workman and employer stands not established on record.

19. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced her to file a totally false and baseless claim. She is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 1 :

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4 :

22. Not pressed.

Relief :

23. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is,

therefore, dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 205/2014
Date of Institution : 03-5-2014
Date of Decision : 14-6-2019

Shri Dhani Ram s/o Shri Kirpa Ram, r/o Village Ram Nagar, P.O. Tathail, Tehsil Palampur,
District Kangra, H.P. . *Petitioner*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Dhani Ram s/o Shri Kirpa Ram, r/o Village Ram Nagar, P.O. Tathail, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in

Agroforestry department *w.e.f.* the year 2001 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2001 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a

clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on work contract basis during November, 2006, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had himself worked as a contractor and had raised various bills. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not

a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dhani Ram appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statues of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence

copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F2, copy of award dated 30.6.2014 as Ex. RW1/G, copy of order dated 20.3.2014 as Ex. RW1/H, copy of letter dated 29.1.2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/L, copy of contract license dated 16.7.2014 as Ex. RW1/M, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 :	No
Issue No. 2 :	No
Issue No. 3 :	Decided accordingly
Issue No. 4 :	Yes
Issue No. 5 :	Not pressed
Issue No. 6 :	Yes
Issue No. 7 :	Yes
Issue No. 8 :	Yes
Issue No. 9 :	Yes
Relief :	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Dhani Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are

mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA1 to RA5 (now as Ex. RW1/D to Ex. RW1/F2). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen–Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2001. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F2 are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29.1.2011 regarding registration of establishment.
32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F2. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar

Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. No muster-roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex.RW1/D to Ex. RW1/F2, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2001 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of June, 2019.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 159/2014

Date of Institution : 17.4.2014

Date of Decision : 14.6.2019

Shri Mukesh Kumar s/o Shri Lamber Singh, r/o VPO Bhattu Samula, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Mukesh Kumar s/o Shri Lamber Singh, r/o V.P.O. Bhattu Samula, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Fodder department *w.e.f.* the year 1999 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Fodder department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Fodder department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 1999 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The

services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayata Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. It was asserted that as the petitioner had never been engaged by the respondent, so the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondent on the grounds that the services of the workers had not been engaged as daily paid labourers on muster-roll basis. The respondent had never forced the petitioner to work under the M/s Sahayata Security Services. No record has been placed on the file by the petitioner in support his claim. The provisions of the Act are not attracted in this case as the petitioner was not engaged by the respondent university. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that his services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Mukesh Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of notification dated 13.11.1998 as Ex. PW1/C, copy of office order dated 17.2.1999 as Ex. PW1/D, copy of notification dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue of CSK as Ex. PW1/G, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I, copy of office order dated 19.7.2010 as Ex. PW1/J and seniority list as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D and Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of Award as Ex. RW1/I, copy of order dated 20.3.2014 as Ex. RW1/J, copies of registration certificates as Ex. RW1/K to Ex. RW1/O and copies of agreement deeds as Ex. RW1/P to Ex. RW1/U.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS*Issues No. 1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Mukesh Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that he had not got any appointment letter from the university. He clearly admitted that seniority list is prepared only of daily wagers. He was categorical that his name does not figure in the seniority list, nor he had raised any objection in this regard. Further, he admitted that all the workers engaged on muster roll by the university have been regularized as per the policy of the Government. He specifically denied that he had never been kept on muster roll. He had to admit that he has not annexed any muster roll with the petition. It was also admitted by him that he had worked in different projects of various departments of the university and that Ex. PW1/B to Ex. PW1/F give the description of the projects. These days he is not working anywhere. He clearly admitted that from March, 2010 onwards works were being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and he had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen—Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the copy of seniority list of the daily waged workers in the CSK HPKV as it stood on 31.3.2008.

22. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

23. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

24. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1999. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1999 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

28. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

30. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

31. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

32. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

34. Ex. RW1/I is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

35. Ex. RW1/J is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

36. Ex. RW1/K is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

37. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011 which corresponds to Ex. PW2/B.

38. Ex. RW1/M is the copy of application for registration of establishments employing contract labour issued by Labour Officer-cum-Registering Officer, Dharamshala.

39. Ex. RW1/N is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

40. Ex. RW1/O is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-cum-Registering Officer, Dharamshala.

41. Ex. RW1/P is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

42. Ex. RW1/Q is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

43. Ex. RW1/R is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. RW1/S is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/T is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/U is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop.*

Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

48. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had never been engaged by the university. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. He while under cross-examination was categorical that in case of a daily paid worker appointment letter is issued and that the university had not issued any appointment letter to him. Then, he tendered in evidence a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008, as Ex. PW1/K. A similar seniority list has also been placed and exhibited on record by the respondent as Ex. RW1/E. The name of the petitioner nowhere figures in this seniority list as a daily paid worker. Placed on record by the respondent is also the revised seniority list of daily paid workers as it stood on 31.3.2006, as Ex. RW1/D. The name of the petitioner also does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority lists. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster-rolls with the petition. This only goes to show that he had never been engaged on the muster-roll. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 1999 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

49. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1999 uptil March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was

a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

50. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

51. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

52. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

53. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondent. It is an admitted case of the

petitioner that he had not challenged or objected to the seniority lists, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker and he is not entitled to any relief, as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5:

54. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief:

55. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. :	166/2014
Date of Institution :	17-4-2014
Date of Decision :	14-6-2019

Smt. Parvati Devi w/o Shri Parkash Chand, r/o Village & P.O. Tanda (Rajpur), Tehsil Palampur, District Kangra, H.P. *. Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *. Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Sh. N.L. Kaundal, AR
For the Respondent :	Shri Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Parvati Devi w/o Sh. Parkash Chand, r/o Village & P.O. Tanda (Rajpur), Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in Soil Science department *w.e.f.* 5.4.2004 and she continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Soil Science department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Soil Science department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2004 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted

the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Soil Science department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. As and when the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. She was engaged on contractual labour during the year from 2006 to 2008, for which she has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, her name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated, as she had not been engaged by the respondent to perform any work. The head of department had not violated any provisions of the Act. The workman had not come to attend her

work at her own, as she was not interested to work under the registered contractor. She only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Parvati Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of notification dated 13.11.1998 as Ex. PW1/C, copy of office order dated 17.2.1999 as Ex. PW1/D, copy of notification dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statutes of CSK as Ex. PW1/G, copy of proceedings dated 4.4.2009 as Ex.

PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J and seniority list as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of seniority list as Ex. PW1/D and Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.02.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of detail of petitioner as Ex. RW1/I, copy of Award as Ex. RW1/J, copy of order dated 20.3.2014 as Ex. RW1/K, copies of registration certificates as Ex. RW1/L to Ex. RW1/P and copies of Agreement deeds as Ex. RW1/Q to Ex. RW1/V.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Parvati Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, she admitted that her name was not sponsored by the Employment Exchange. She also admitted that she had not got any appointment letter from the university. She clearly admitted that seniority list is prepared only of daily wagers. She was categorical that her name does not figure in the seniority list, nor she had raised any objection in this regard. Further, she admitted that all the workers engaged on muster roll by the university have been regularized as per the policy of the Government. She specifically denied that she had never been kept on muster roll. She had to admit that she has not annexed any muster roll with the petition. It was also admitted by her that she had worked in different projects of various departments of the university

and that Ex. PW1/B to Ex. PW1/F give the description of the projects. These days she is posted in Welfare Office. She clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. She denied that she had worked as a seasonal worker in various projects. She also denied that she had never worked as a daily paid worker and she had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

22. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

23. Ex. PW2/B is the copy of Certificate of registration dated 27.7.2011.

24. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent. In the cross-examination, he admitted that the petitioner was kept at work

in the year 2004. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2004 upto the year 2010, the petitioner had worked for 240 days in every year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service written by the Deputy Registrar (Admn.), CSK, HPKV, Palampur.

27. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

28. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

30. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

31. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

32. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

34. Ex. RW1/I is the copy of working details of the petitioner.

35. Ex. RW1/J is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

36. Ex. RW1/K is the copy of order dated 20.3.2014 passed by this Court in Reference No.207/2010.

37. Ex. RW1/L is the copy of certificate of registration relating to M/s Sahyata Security Services.

38. Ex. RW1/M is the copy of certificate of registration dated 27.7.2011 pertaining to M/s Sun Security Services.

39. Ex.RW1/N is the copy of application for registration of establishments employing contract labour.

40. Ex.RW1/O is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial Escorts Services.

41. Ex.RW1/P is the copy of application for registration of establishments employing contract labour.

42. Ex.RW1/Q is the Agreement deed dated 30th August, 2010 executed between CSK HPKV, Palampur and M/s Sahayta Security Services Pvt. Ltd.

43. Ex.RW1/R is the Agreement deed dated 31st March, 2011 executed between CSK HPKV, Palampur and M/s Sun Security Services Pvt. Ltd.

44. Ex.RW1/S is the Agreement deed dated 30th March, 2012 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. Ex.RW1/T is the Agreement deed dated 18th June, 2013 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. Ex.RW1/U is the Agreement deed dated 31.3.2015 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. Ex.RW1/V is the Agreement deed dated 12th May, 2015 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon her. It was also observed therein that where a person asserts that she was a workman of the company, and it is denied by the company, it is for her to prove the fact. It is not for the company to prove that she was not an employee of the company but of some other person.

49. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as a contractual labour and had raised the bills, payment of which had been made to her not below the Government rates. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked in the years 2006 to 2008 on individual contract basis and from the month of June, 2008 upto March, 2010, she had worked through unregistered contractor. Later, as per this document, she is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner herself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that her name does not find mention in the seniority list. No reason has been assigned by her as to why her

name does not figure in the seniority list of daily paid workers maintained by the respondent. She clearly admitted that no objection was ever raised by her for her name being not there in the seniority list. No explanation is also forthcoming from her mouth as to why she did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner herself clearly admitted that she had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. The petitioner in her substantive evidence clearly admitted that she had not filed any of her muster-rolls with the petition. This only goes to show that she had never been engaged on the muster-roll. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

50. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2004 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in her name. No muster-roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The details of the petitioner Ex. RW1/I, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani*** 2002 SCC (L&S) 367, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

51. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors.*** 1996 SCC (L&S) 1273; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr.*** Latest HLJ 2007 (HP) 903 and ***Basanti Devi and others vs. State of Jharkhand and Ors.*** 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

52. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

53. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

54. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that she had not challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, she is not entitled to any relief as claimed for by her. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

55. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

56. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)**

Ref. No. : 116/2017
Date of Institution : 21-06-2017
Date of Decision : 15-06-2019

Shri Chaman Lal s/o Shri Hari Singh, r/o Village Sanghan, P.O. Jugahan, Tehsil Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

1. The Employer/Manager, M/S GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P.(Work Office).
2. The Employer, M/s Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Pubjab (Area Office).
3. The Managing Director, M/S Adecco India Private Limited, No.2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore,(Corporate Office). . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.
For the Respondent No.1 : Sh. Rajat Sahotra, adv.
For the Respondent(s) No.2&3 : Sh. Manish Katoch, adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Chaman Lal s/o Shri Hari Singh, r/o Village Sanghan, P.O. Jugahan, Tehsil Sunder Nagar, District Mandi, H.P. w.e.f. 28-06-2013 by (i) the Employer/Manager, M/s GVK EMRI, J P Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P.(Work Office), (ii) the Employer, M/s Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali,

Punjab (Area Office) (iii) the Managing Director, M/s Adecco India Private Limited, No.2 NAL Wind Tunnel Road, Murugeshpalya, Bangalore. (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. The case was listed for filing of power of attorney and statement of claim on behalf of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due knowledge of the date of hearing, petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

"(b) 'award' means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;".

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called "The Industrial Disputes (Central) Rules, 1957." Rule 10-B (9) reads thus:—

"10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party."

5. Rule 22 reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the petitioner nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 28-06-2013 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner. At the risk of repetition the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 119/2017
Date of Institution : 21-06-2017
Date of Decision : 15-06-2019

Shri Rohit Sharma s/o Shri Narayan Dass Sharma, r/o Village Pabo, P.O. Sukkibain, Tehsil Chachiot, District Mandi, H.P. . *Petitioner.*

Versus

1. The Employer/Manager, M/s GVK EMRI, J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P.

2. The Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla.

3. The Employer/Managing Director, M/s Adecco Flexione Workforce Solutions Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Pubjab (Contractor company)

4. The Managing Director, M/s Adecco India Private Limited, No. 2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore, (Corporate Office). . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Nemo.
For the Respondent No.1 :	Sh. Rajat Sahotra, adv.
For the Respondent No. 2 :	Sh. S. S. Kaundal, Dy.D.A.
For the Respondent(s) No. 3 & 4 :	Sh. Manish Katoch, adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rohit Sharma s/o Shri Narayan Dass Sharma, r/o Village Pabo, P.O. Sukkibain, Tehsil Chachiot, District Mandi, H.P. *w.e.f.* 02-06-2013 by (i) the Employer/Manager, M/s GVK EMRI, J P Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (ii) the Mission Director, National Health Rural Mission, Government of Himachal Pradesh, Shimla (iii) the Employer/Managing Director, M/s Adecco Flexione Workforce Solution Private Limited, C-127, Basement Level, Satguru Infotech, Phase-VIII, Industrial Area Mohali, Punjab (Contractor company) (iv) the Managing Director, M/s Adecco India Private Limited, No. 2 NAL Wind Tunnel Road, Murugeshpalya, Bangalore. (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/Management?”

2. The case was listed for filing of power of attorney and statement of claim on behalf of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due knowledge of the date of hearing, petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:-

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board,

Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

6. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the petitioner nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 02-06-2013 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner. At the risk of repetition the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 168/2014
Date of Institution : 17-4-2014
Date of Decision : 15-6-2019

Shri Vineet Kumar s/o Shri Shambhu Ram, r/o VPO Rajehar, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Vineet Kumar s/o Sh. Shambhu Ram, VPO Rajehar, Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Fodder department *w.e.f.* 03.10.2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Fodder department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Fodder department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed.

However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during January, 2009, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the

Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a Individual Work Contractor/unregistered contractor from January, 2009 upto December, 2009. He had raised various bills. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The head of department had not violated any of the provisions of the Act. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar project from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? ..OPP.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
3. Whether the claim petition is not maintainable in the present form? ..OPR.

4. Whether the petitioner has no locus standi to file the case as alleged? ..OPR.
5. Whether the petitioner has no cause of action to file the present case as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vineet Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8.7.1998 as Ex. PW1/B, copy of letter dated 13.11.1998 as Ex. PW1/C, copy of letter dated 17.2.1999 as Ex. PW1/D, copy of letter dated 26.4.1999 as Ex. PW1/E, copy of letter dated 4.9.1986 as Ex. PW1/F, copy of statue as Ex. PW1/G, copy of proceeding dated 4.4.2009 as Ex. PW1/H, copy of Agreement as Ex. PW1/I, copy of office order dated 19.7.2010 as Ex. PW1/J, and copy of Seniority list as Ex. PW1/K. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKVV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of notification dated 13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D and Ex. RW1/E, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of detail of the petitioner as Ex. RW1/I, copies of contingent bills and payment receipts as Ex. RW1/J to Ex. RW1/Z, copy of Award as Ex. RW1/Z1 & copy of order dated 20.3.2014 as Ex. RW1/Z2, copies of registration certificates as Ex. RW1/Z3 to Ex. RW1/Z7 and copies of agreement deeds as Ex. RW1/Z8 to Ex. RW1/Z13.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 :	Negative
Issue No. 2 :	Negative
Issue No. 3 :	Yes
Issue No. 4 :	Yes
Issue No. 5 :	Yes
Relief :	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vineet Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of

his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid worker is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster-roll. He also admitted that he had worked in various projects of different departments of the university and that Ex. PW1/B to Ex. PW1/F give a description of those projects. Nowadays he is posted in Antomology department. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

21. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

22. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

23. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

26. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

27. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

28. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

29. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

30. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

31. Ex. RW1/I is the copy of working details of the petitioner.

32. Ex. RW1/J to Ex. RW1/Z are the copies of bills pertaining to the petitioner.

33. Ex. RW1/Z1 is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

34. Ex.RW1/Z2 is the copy of order dated 20.3.2014 passed by this Court in Reference No.207/2010.

35. Ex. RW1/Z3 is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahyata Security Services.

36. Ex.RW1/Z4 is the copy of certificate of registration dated 27.7.2011 pertaining to M/s Sun Security Services.

37. Ex.RW1/Z5 is the copy of application for registration of establishments employing contract labour.

38. Ex.RW1/Z6 is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial Escorts Services.

39. Ex.RW1/Z7 is the copy of application for registration of establishments employing contract labour.

40. Ex.RW1/Z8 is the Agreement deed dated 30th August, 2010 executed between CSK HPKV, Palampur and M/s Sahayta Security Services Pvt. Ltd.

41. Ex.RW1/Z9 is the Agreement deed dated 31st March, 2011 executed between CSK HPKV, Palampur and M/s Sun Security Services Pvt. Ltd.

42. Ex.RW1/Z10 is the Agreement deed dated 30th March, 2012 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

43. Ex. Ex.RW1/Z11 is the Agreement deed dated 18th June, 2013 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. Ex.RW1/Z12 is the Agreement deed dated 31.3.2015 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. Ex.RW1/Z13 is the Agreement deed dated 12th May, 2015 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

47. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him not below the Government rates. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner

to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked from January, 2009 to December, 2009 on individual contract basis. Later, as per this document, he is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university and its detail is there in Ex. PW1/B to Ex. PW1/F. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster-rolls with the petition. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex. RW1/J to Ex. RW1/Z, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

48. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has

been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

49. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors.* 1996 SCC (L&S) 1273; *State of Himachal Pradesh and others vs. Bhatag Ram and Anr.* Latest HLJ 2007 (HP) 903 and *Basanti Devi and others vs. State of Jharkhand and Ors.* 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.**

50. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors.* 2011 (131) FLR 759 and *Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165*, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.**

51. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others*, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers*, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

52. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

53. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable

in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 202/2014
Date of Institution : 03-5-2014
Date of Decision : 15-6-2019

Shri Vijay Kumar s/o Shri Karam Singh, r/o VPO Thanag, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vijay Kumar s/o Shri Karam Chand, r/o V.P.O. Thanag, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April 2010,

without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry department *w.e.f.* 5.5.2007 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls

of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during June, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from June, 2007 upto February, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision

had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
 2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
 3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
 4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
 5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
 6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
 7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
 8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
 9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
- Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vijay Kumar appeared as PW1 and tendered in

evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F1, copy of award dated 30.6.2014 as Ex. RW1/G, copy of order dated 20.3.2014 as Ex. RW1/H, copy of letter dated 29.1.2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/L, copy of contract license dated 16.7.2014 as Ex. RW1/M, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Decided accordingly

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Yes

Issue No. 7 : Yes

Issue No. 8 : Yes

Issue No. 9 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vijay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-4 (now as Ex. RW1/D to Ex. RW1/F1). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2007. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2007 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F1 are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the

seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F1. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/F1, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2007 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2007 uptil March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172.*** I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165,*** where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974,*** wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509,*** wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking into account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 203/2014

Date of Institution : 03.5.2014

Date of Decision : 17.6.2019

Shri Anup Kumar s/o Shri Badru Ram, r/o Village Hoslu, P.O. Deogran, Tehsil Palampur,
District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Anup Kumar, s/o Shri Badru Ram, r/o Village Hoslu, P.O. Deogran, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry department *w.e.f.* 5.5.2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis

or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on contract basis during December, 2006, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from December, 2006 upto February, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages

bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*
10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Anup Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statues of university Mark-A, copy of

proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F1, copy of award dated 30.6.2014 as Ex. RW1/G, copy of order dated 20.3.2014 as Ex. RW1/H, copy of letter dated 29.1.2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/L, copy of contract license dated 16.7.2014 as Ex. RW1/M, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Decided accordingly

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Yes

Issue No. 7 : Yes

Issue No. 8 : Yes

Issue No. 9 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Anup Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are

mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-4 (now as Ex. RW1/D to Ex. RW1/F1). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen–Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F1 are the copies of contingent bill relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16.7.2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayata Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Makgt. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F1. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar

Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/F1, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order

as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 144/2014
Date of Institution : 16-4-2014
Date of Decision : 17-6-2019

Shri Vinod Kumar s/o Late Shri Mehar Singh, r/o Village Bhattu Samula, P.O. Pharer, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vinod Kumar s/o Late Shri Mehar Singh, r/o Village Bhattu Samula, P.O. Pharer, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Horticulture department *w.e.f.* June, 2008 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Horticulture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Horticulture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2008 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Horticulture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract

basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and his services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. It was asserted that as the petitioner had never been engaged by the respondent, so the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondent on the grounds that the services of the workers had not been engaged as daily paid labourers on muster-roll basis. The respondent had never forced the petitioner to work under the M/s Sahayata Security Services. No record has been placed on the file by the petitioner in support his claim. The provisions of the Act are not attracted in this case as the petitioner was not engaged by the respondent university. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that his services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vinod Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of certificate dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statue of CSK as Ex. PW1/H, copy of proceedings dated 4.4.2009 as Ex. PW1/I, copy of Agreement deed as Ex. PW1/J, copy of office order dated 19.7.2010 as Ex. PW1/K and seniority list as Ex. PW1/L. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D and Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of Award as Ex. RW1/I, copy of order dated 20.3.2014 as Ex. RW1/J, copies of registration certificates as Ex. RW1/K to Ex. RW1/O and copies of agreement deeds as Ex. RW1/P to Ex. RW1/U.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS*Issues No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vinod Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/L.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that he had not got any appointment letter from the university. He clearly admitted that seniority list is prepared only of daily wagers. He was categorical that his name does not figure in the seniority list, nor he had raised any objection in this regard. Further, he admitted that all the workers engaged on muster-roll by the university have been regularized as per the policy of the Government. He specifically denied that he had never been kept on muster-roll. He had to admit that he has not annexed any muster roll with the petition. It was also admitted by him that he had worked in different projects of various departments of the university. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works were being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and he had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex.PW1/B is the copy of certificate relating to Mrs. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

19. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

20. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

21. Ex. PW1/K is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

22. Ex. PW1/L is the copy of seniority list of the daily waged workers in the CSK HPKV as it stood on 31.3.2008.

23. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

24. Ex. PW2/B is the copy of certificate of registration dated 27.7.2011.

25. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2008. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

26. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

27. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

28. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

29. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

30. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

31. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

32. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

33. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

34. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

35. Ex. RW1/I is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

36. Ex. RW1/J is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

37. Ex. RW1/K is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

38. Ex. RW1/L is the copy of certificate of registration dated 27.7.2011 which corresponds to Ex. PW2/B.

39. Ex. RW1/M is the copy of application for registration of establishments employing contract labour issued by Labour Officer-cum-Registering Officer, Dharamshala.

40. Ex. RW1/N is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

41. Ex. RW1/O is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-cum-Registering Officer, Dharamshala.

42. Ex. RW1/P is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

43. Ex. RW1/Q is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

44. Ex. RW1/R is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/S is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/T is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. RW1/U is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble

Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

49. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had never been engaged by the university. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. He while under cross-examination was categorical that in case of a daily paid worker appointment letter is issued and that the university had not issued any appointment letter to him. Then, he tendered in evidence a copy of seniority list of daily waged workers in the university, as it stood on 31.3.2008, as Ex. PW1/L. A similar seniority list has also been placed and exhibited on record by the respondent as Ex. RW1/D. The name of the petitioner nowhere figures in this seniority list as a daily paid worker. Placed on record by the respondent is also the revised seniority list of daily paid workers as it stood on 31.3.2006, as Ex. RW1/D. The name of the petitioner also does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority lists. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he has not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster-roll. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in June, 2008 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

50. Next, it was claimed by the petitioner that he had worked continuously with the respondent from June, 2008 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily

paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

51. In all fairness the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. For the reasons recorded hereinabove, as the petitioner has failed to establish on record that he was appointed as a daily paid worker on muster roll by the respondent, the petitioner cannot derive any advantage of what has been discussed in these cases.

52. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

53. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

54. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority lists, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker and he is not entitled to

any relief, as claimed for by him. Hence, both these issues are answered in the negative and decided against the petitioner.

Issues No. 3 to 5 :

55. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and decided in favour of the respondent.

Relief :

56. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 175/2014
Date of Institution : 02-5-2014
Date of Decision : 17-6-2019

Shri Suresh Kumar s/o Shri Dhani Ram, r/o Village Ambari, P.O. Malan, Tehsil and District Kangra, H.P. . *Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Suresh Kumar s/o Shri Dhani Ram, r/o Village Ambari, P.O. Malan, Tehsil and District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Rice and Wheat department *w.e.f.* the year 1994 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice and Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice and Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and

had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice and Wheat department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during August, 2000, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him for the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will.

He had himself worked as a contractor and had raised various bills from the month of October, 2006 upto June, 2010. The head of department had not violated any provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had raised the bills as a contractor. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*

9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . . OPR.

10. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Suresh Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copy of certificate of registration as Ex. PW2/A and copies of licenses of M/s Sun Security New Vision Security as Ex. PW2/B and Ex. PW2/C respectively. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D14, copy of award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of letter dated 29.1.2011 as Ex. RW1/G, copy of license/registration dated 29.1.2011 as Ex. RW1/H, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/I, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark -X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/P, copy of registration certificate dated 11.7.2014 as Ex. RW1/Q and copy of license of M/s Sahayta Security services Ex. RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Decided accordingly

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Yes

Issue No. 7 : Yes

Issue No. 8 : Yes

Issue No. 9 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Suresh Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be engaged in the department. Volunteered that, no appointment letter was issued to them. He admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA (14 pages) (now as Ex. RW1/D1 to Ex. RW1/D14). He also admitted as per the bill vouchers he had received the payments. He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of registration certificate of CSKHPKVV Palampur as Ex.PW2/A and copies of licenses of M/s Sun Security and M/s. New Vision as Ex.PW2/B and Ex. PW2/C respectively.

In the cross-examination, he admitted that the university is an educational institute. He feigned ignorance that research work is conducted in the university. Ex. PW2/A was issued for work in the Research Project in Agriculture Field Operations.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B to Ex.PW2/C are the copies of licenses dated 2.9.2011 and 21.8.2012 pertaining to M/s Sun Security Service and M/s Nuvision Commercial & Escorts services.

23. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1994. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1994 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D1 to Ex. RW1/D14 are the copies of contingent bills relating to the petitioner.

29. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/G is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/H is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security Services.

34. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/K is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/L is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

41. Ex. RW1/Q is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial and Escorts Services.

42. Ex. RW1/R is the copy of licence dated 5.8.2006 relating to M/s Sahyata Security.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Makgt. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show

that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D1 to Ex. RW1/F14. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D14, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1994 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and***

Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of June, 2019.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA, AT DHARAMSHALA (H.P.)

Ref. No. : 801//2016
Date of Institution : 19-11-2016
Date of Decision : 15-06-2019

Shri Ajay Katoch s/o Shri Amir Chand, r/o V.P.O. Malkehar, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Principal Chief Conservator of Forest, Himachal Pradesh, Shimla-1.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ajay Katoch s/o Shri Amir Chand, r/o V.P.O. Malkehar, Tehsil Palampur, District Kangra, H.P. *w.e.f.* 01-04-2006 by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-1 & (2) the Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. who had worked as beldar on daily wages basis *w.e.f.* 01-12-1993 to 31-03-2006 and has raised his industrial dispute *vide* demand notice dated 11-05-2015 after more than 9 years, without complying with the

provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged on daily waged basis on muster roll by the respondents *w.e.f.* 1.12.1993, without any appointment order and settlement of terms and conditions. On the verbal orders, he was deputed by the respondents to work with Indo-German Changer Project, Palampur (IGCP). Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. He had worked continuously with the respondents without any breaks upto 31.03.2006 and had completed 240 days in each calendar year. During the period from the year 1993 upto 31.3.2006, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondents/department on 31.3.2006, with prior notice. On his asking, he was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31.3.2006 and that his services were no more required by the department in future. Alongwith him 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondents had violated the principle of 'last come first go' as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand & Anup Chauhan, who both were junior to the petitioner, had worked with the respondents as such upto 31.12.2006. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, that petition was bad on account of delay and laches and for non-joinder of necessary parties. The contents of the petitioner were denied on merits. It is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wage/contractual during the year 2004 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondents are not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondents, the question of adjusting other workers by the respondents does not arise. No verbal assurance had ever been given by the respondents to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondents also did not arise. The petitioner is working as and agriculturist and is gainfully employed. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 18.10.2017:

1. Whether termination of the services of petitioner by the respondents *w.e.f.* 01.04.2006 is/was illegal and unjustified as alleged? . . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged? . .*OPR*.
5. Whether the claim petition is bad for non-joinder of necessary party as alleged? . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ajay Katoch appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21.12.2004, 1.1.2009, 15.12.2009, 3.12.2009, 15.2.2006, 29.4.2009, 17.11.2008, 2.1.2014 & 21.9.1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K and copies of RTI information dated 4.1.2011, 22.9.2011 & 18.9.2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1.12.2009 as Ex. PW1/N, copy of order dated 28.2.2013 as Ex. PW1/O, copy of RTI information dated 1.1.2014 as Ex. PW1/P, copy of order dated 2.12.2008 as Ex. PW1/Q, copy of RTI dated 14.8.2014 as Ex. PW1/R and copy of staff engaged as on 3.12.2009 as Ex. PW1/S. The respondents examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of mandays chart as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Ajay Katoch (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in the project, but had worked in the forest department. He denied that he was engaged *w.e.f.* 1.8.2004 in the said project. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He also showed his ignorance that the project was a German aided project. He was also not aware that the forest department had no concern with the project. He denied that he was kept on temporary basis in the project. He denied that he had neither been kept nor removed from work by the forest department. He denied that from the year 2006 upto the year 2015, he had not raised the dispute. He admitted that he had raised the demand notice in May, 2015. He categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates. He denied that a false claim has been filed just to take undue benefit.

11. Ex. PW1/B is the copy of letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

12. Ex. PW1/C is the copy of letter dated 1.1.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

13. Ex. PW1/D is the copy of letter dated 15.12.2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

14. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

15. Ex. PW1/F is the copy of letter dated 15.2.2006 regarding closure of Indo-German Changer Project Palampur

16. Ex. PW1/G is the copy of letter dated 29.4.2009 regarding appointment of daily waged drivers- Information under RTI thereof.

17. Ex. PW1/H is the copy of letter dated 17.11.2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

18. Ex. PW1/I is the copy of letter dated 2.1.2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

19. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

20. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

21. Ex. PW1/M is the copy of letter dated 22.9.2014 regarding information filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

22. Ex. PW1/N is the copy of order dated 1.12.2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

23. Ex. PW1/O is the copy of order dated 28.2.2013 passed by the learned Additional District Judge-II, Kangra at Dhramshala in Civil Appeal No.271-P/2010.

24. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

25. Ex. PW1/Q is the copy of Award dated 2.12.2008 passed in Reference No.117/2007 by this Court.

26. Ex. PW1/R is the copy of letter dated 14.8.2014 information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

27. Ex. PW1/S is the copy of staff engaged after 3.12.2009.

28. Conversely, Shri B.S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster roll. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto the year 2006, the petitioner had continuously worked for more than 240 days. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was also admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. He further admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

29. Ex. RW1/B is the copy of list of contractual staff of defunct Indo-German Eco-Development project, Palampur. It depicts the name of the petitioner at serial No. 20 and that he had worked on contractual basis for different spells from 15.1.2003 to 31.12.2006.

30. It is the case of the petitioner that his services were engaged as a daily wager on muster roll basis *w.e.f.* 1.12.1993 by the respondents/department and had worked upto 31.3.2006, as claimed by him in the statement of claim. The respondents denied this fact. Placed on record by the respondents is a list of contractual staff of defunct Indo-German Eco-Development Project, Palampur, as Ex. RW1/B. Its perusal discloses that the petitioner had worked as Mentoring Assistant in the aforesaid project on contractual basis for different spells *w.e.f.* 15.1.2003 and had worked as such upto 31.12.2006. Since, the petitioner had worked in the project even after April, 2006, the question of final termination of his service by the respondents (as per the reference) does not arise. Rather, the same has become insignificant.

31. Next, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis. The respondents denied this fact. Therefore, the onus lay on the petitioner to prove such fact. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster-rolls. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. This only goes to show that he had never been engaged on the muster-roll. Then, no seniority list of daily waged workers maintained by the respondents, reflecting his name, has been placed and exhibited on record by the petitioner. Rather, as discussed above, per the list of contractual staff of defunct Indo-German Eco-Development Project, Palampur, Ex. RW1/B, the petitioner had worked as a Mentoring Assistant in the project for specified periods on contract basis. Lastly, from 1.10.2006 to 31.12.2006, he had worked on contract basis. Admittedly, the period of contractual appointment of the petitioner came to an end on 31.12.2006. Thereafter, the contractual employment of the petitioner was not renewed by the employer, since as per the version of the respondents the Indo-German Changer Project stood closed.

32. In view of the document Ex.RW1/B, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services had been engaged by the respondents on daily wage basis. It is the basic law that non renewal of the term of the contractual appointment does not fall within the mischief of the word 'retrenchment' as defined in the Act as per clause (bb) of Section 2(oo) of the Act. For these reasons, neither the claim petition is maintainable nor it can be concluded that the respondents has flouted any of the provisions of the Act.

33. Be it stated that the services of the petitioner were not terminated by the respondents as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from time to time *w.e.f.* 15.1.2003 upto 31.12.2006 came to end with the efflux of time.

34. Such being the situation and taking into account the observations made in cases titled as ***State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81***, it is held that the petitioner has no locus standi to sue.

35. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. No relief can be granted to him.

36. Both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3 :

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

38. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

39. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 5 :

40. Not pressed.

Relief :

41. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. :	678//2016
Date of Institution :	03-10-2016
Date of Decision :	15-06-2019

Shri Rakesh Chand s/o Shri Jiwan Chand, r/o Village Bhadel Devi, P.O. Bhawarna, Tehsil Palampur, District Kangra, H.P. *. Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *. Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Sh. N.L. Kaundal, AR
For the Respondent :	Sh. S. S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Rakesh Chand s/o Sh. Jiwan Chand r/o Village Bhadel Devi, P.O. Bhawarna, Tehsil Palampur, Distt. Kangra, H.P. *w.e.f.* 1/1/2007 by the Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis *w.e.f.* 28/11/2001 to 31/12/2006 and has raised his industrial dispute *vide* demand notice dated 7/5/2015 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged on daily waged basis on muster-roll by the respondent *w.e.f.* 28.11.2001, without any appointment order and settlement of terms and conditions. On the verbal orders, he was deputed by the respondent to work with Indo-German Changer Project, Palampur (IGCP). Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. He had worked continuously with the respondent without any breaks upto 31.12.2006 and had completed 240 days in each calendar year. During the period from the year 2001 upto 31.3.2006, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondent/department on 1.1.2007, without notice. On his asking, he was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31.3.2006 and that his services were no more required by the department in future. Alongwith him 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondent had violated the principle of ‘last come first go’ as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand, Anup Chauhan and Ajay Katoch, who all were junior to the petitioner, had worked with the respondent as such upto 31.12.2006. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that petition was bad on account of delay and laches and for non-joinder of necessary parties. The contents of the petition were denied by the respondent on merits. It is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wager during the year 2001 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondent is not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondent, the question of adjusting other workers by the respondent does not arise. No verbal assurance had ever been given by the respondent to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondent also did not arise. The petitioner is working as an agriculturist and is gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 18.10.2017:

1. Whether termination of the services of petitioner by the respondent *w.e.f.* 01.01.2007 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged? . . .*OPR.*
5. Whether the claim petition is bad for non-joinder of necessary party as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rakesh Chand appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21.12.2004, 1.1.2009, 15.12.2009, 3.12.2009, 15.2.2006, 29.2.2004, 17.11.2008, 2.1.2014 & 21.9.1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K, copies of RTI information dated 4.1.2011, 22.9.2011 & 18.9.2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1.12.2009 as Ex. PW1/N, copy of order dated 28.2.2013 as Ex. PW1/O, copy of RTI information dated 1.1.2014 as Ex. PW1/P, copy of order dated 2.12.2008 as Ex. PW1/Q, copy of RTI dated 14.8.2014 as Ex. PW1/R and copy of staff engaged as on 3.12.2009 as Ex. PW1/S. The respondent examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart as Ex. RW1/B and copy of agreement as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : No

Issue No. 5 : Not pressed

Relief. : Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Rakesh Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in the project, but had worked in the forest department. He denied that he was engaged *w.e.f.* 27.5.2003 in the said project. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He denied that he had worked on contract basis from the month of April, 2006 upto December, 2006. He also showed his ignorance that the project was a German aided project. He was also not aware that the forest department had no concern with the project. He denied that he was kept on temporary basis in the project. He denied that he had neither been kept nor removed from work by the forest department. He denied that from the year 2007 upto the year 2015, he had not raised the dispute. He admitted that he had raised the demand notice in May, 2015. He categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates. He denied that a false claim has been filed just to take undue benefit.

11. Ex. PW1/B is the copy of letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

12. Ex. PW1/C is the copy of letter dated 1.1.2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

13. Ex. PW1/D is the copy of letter dated 15.12.2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP

14. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

15. Ex. PW1/F is the copy of letter dated 15.2.2006 regarding closure of Indo-German Changer Project Palampur

16. Ex. PW1/G is the copy of letter dated 29.4.2009 regarding appointment of daily waged drivers- Information under RTI thereof.

17. Ex. PW1/H is the copy of letter dated 17.11.2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

18. Ex. PW1/I is the copy of letter dated 2.1.2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

19. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

20. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

21. Ex. PW1/M is the copy of letter dated 22.9.2014 regarding information of filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

22. Ex. PW1/N is the copy of order dated 1.12.2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

23. Ex. PW1/O is the copy of order dated 28.2.2013 passed by the learned Additional District Judge-II, Kangra at Dhramshala in Civil Appeal No.271-P/2010.

24. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

25. Ex. PW1/Q is the copy of Award dated 2.12.2008 passed in Reference No.117/2007 by this Court.

26. Ex. PW1/R is the copy of letter dated 14.8.2014, being information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

27. Conversely, Shri B. S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster roll. Self stated that, he was kept on agreement. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto 31.12.2006, the petitioner had continuously worked for more than 240 days. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was also admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was further admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. Further, he admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

28. Ex. RW1/B is the copy of list of contractual staff of defunct Indo-German Eco-Development project, Palampur. It depicts the name of the petitioner at serial no.4 and that he had worked on contractual basis for different spells from 27.5.2003 to 31.12.2006.

29. Ex. RW1/C is the copy of Agreement dated 6th December, 2006 executed between the Member Secretary Himachal Pradesh Eco-Development Society, Palampur and Shri Rakesh Katoch (petitioner).

30. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily wage basis. The respondent denied this fact. Therefore, the onus lay on the petitioner to prove such fact. No document has been placed and exhibited on record

by the petitioner to show that he was appointed as a daily waged worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. This only goes to show that he had never been engaged on the muster roll. Then, no seniority list of daily waged workers maintained by the respondent, reflecting his name, has been placed and exhibited on record by the petitioner. Rather, the respondent has tendered in evidence list of contractual staff of defunct Indo-German Eco-Development Project, Palampur as Ex. RW1/B. It reflects the name of the petitioner at serial No. 4. It shows that he had worked as a Panchayat Micro Plan Facilitator in the project for specified periods on contract basis. Lastly, from 1.10.2006 to 31.12.2006, he had worked on contract basis. Placed on record by the respondent is also a copy of agreement, Ex.RW1/C entered into between the petitioner and the Member Secretary, Himachal Pradesh Eco-Development Society, Palampur. As per this agreement the petitioner was to serve the employer for a specified period of three months *w.e.f.* 1.10.2006 upto 31.12.2006. Admittedly, the period of contractual appointment of the petitioner came to an end on 31.12.2006. Thereafter, the contractual employment of the petitioner was not renewed by the employer, since as per the version of the respondent the Indo-German Changer Project stood closed.

31. Clauses 6 & 7 of the Agreement Ex. Ex.RW1/C postulates as under:

“6. The employment is on purely contract basis and the employee shall not claim for regularization in the organization of employer or any other concern of the central or state govt. at any time.

7. This agreement shall come to an end even before the period of this agreement in the event of the termination of the project or/and termination of the specific work given to the employee by the competent authority and in such eventuality, it shall be presumed that the employer has relieved the employee from his service with one calendar month's notice”.

32. In view of the documents Ex.RW1/B and Ex.RW1/C, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services had been engaged by the respondent on daily wage basis. It is the basic law that non renewal of the term of the contractual appointment does not fall within the mischief of the word ‘retrenchment’ as defined in the Act as per clause (bb) of Section 2(oo) of the Act. For these reasons, neither the claim petition is maintainable nor it can be concluded that the respondent has flouted any of the provisions of the Act.

33. Be it stated that the services of the petitioner were not terminated by the respondent as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from time to time *w.e.f.* 27.5.2003 upto 31.12.2006 came to end with the efflux of time.

34. Such being the situation and taking into account the observations made in cases titled as ***State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81***, it is held that the petitioner has no locus standi to sue.

35. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. No relief can be granted to him.

36. Both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4 :

38. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

39. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5 :

40. Not pressed.

Relief :

41. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. :	162/2014
Date of Institution :	17-4-2014
Date of Decision :	18-6-2019

Smt. Shreshtha Devi w/o Shri Swaroop Chand, r/o Village Ambari, P.O. Malan, Tehsil &
District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Shri Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Shreshtha Devi w/o Shri Swaroop Chand, r/o Village Ambari, P.O. Malan, Tehsil & District Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in Rice & Wheat department *w.e.f.* the year 2007 and she continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice & Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice & Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of

the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Rice & Wheat department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. As and when the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. She had worked under the unregistered contractors, namely, S/Sh. Santokh Singh, Kuldeep Kumar, Pritam Chand. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, her name would have figured in the seniority

list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated, as she had not been engaged by the respondent to perform any work. The head of department had not violated any provisions of the Act. The workman had not come to attend her work at her own, as she was not interested to work under the registered contractor. She only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verified the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the petitioner has no locus standi to file the case as alleged? . . .*OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Shreshtha Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of certificate dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statue of CSK as Ex. PW1/H, copy of proceedings dated 4.4.2009 as Ex. PW1/I, copy of agreement deed as Ex. PW1/J, copy of office order dated 19.7.2010 as Ex. PW1/K and seniority list as Ex. PW1/L. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of seniority list as Ex. RW1/D & Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.02.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of detail of petitioner as Ex. RW1/I, copy of Award as Ex. RW1/J, copy of order dated 20.3.2014 as Ex. RW1/K, copies of registration certificates as Ex. RW1/L to Ex. RW1/P and copies of Agreement deeds as Ex. RW1/Q to Ex. RW1/V.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Shreshtha Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/L.

In the cross-examination, she admitted that her name was not sponsored by the Employment Exchange. She also admitted that she had not got any appointment letter from the university. She

clearly admitted that seniority list is prepared only of daily wagers. She was categorical that her name does not figure in the seniority list, nor she had raised any objection in this regard. Further, she admitted that all the workers engaged on muster roll by the university have been regularized as per the policy of the Government. She specifically denied that she had never been kept on muster-roll. She had to admit that she has not annexed any muster roll with the petition. It was also admitted by her that she had worked in different projects of various departments of the university. She clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. She denied that she had worked as a seasonal worker in various projects. She also denied that she had never worked as a daily paid worker and she had never been removed by the department. She admitted that these days she is working with the contractor of the university.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex.PW1/B is the copy of letter dated 5.7.2010 regarding certificate of Mrs. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

19. Ex. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

20. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

21. Ex. PW1/K is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK, HPKV, Palampur.

22. Ex. PW1/L is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

23. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

24. Ex. PW2/B is the copy of Certificate of registration dated 27.7.2011.

25. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2007. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2007 upto the year 2010, the petitioner had worked for 240 days in every year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

26. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

27. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service written by the Deputy Registrar(Admn.), CSK, HPKV, Palampur.

28. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

29. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

30. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

31. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

32. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

33. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

34. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

35. Ex. RW1/I is the copy of working details of the petitioner.

36. Ex.RW1/J is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

37. Ex.RW1/K is the copy of order dated 20.3.2014 passed by this Court in Reference No.207/2010.

38. Ex. RW1/L is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

39. Ex.RW1/M is the copy of certificate of registration dated 27.7.2011 pertaining to M/s Sun Security Services.

40. Ex.RW1/N is the copy of application for registration of establishments employing contract labour.

41. Ex.RW1/O is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial Escorts Services.

42. Ex.RW1/P is the copy of application for registration of establishments employing contract labour.

43. Ex.RW1/Q is the Agreement deed dated 30th August, 2010 executed between CSK HPKV, Palampur and M/s Sahayta Security Services Pvt. Ltd.

44. Ex.RW1/R is the Agreement deed dated 31st March, 2011 executed between CSK HPKV, Palampur and M/s Sun Security Services Pvt. Ltd.

45. Ex.RW1/S is the Agreement deed dated 30th March, 2012 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. Ex.RW1/T is the Agreement deed dated 18th June, 2013 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. Ex.RW1/U is the Agreement deed dated 31.3.2015 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. Ex. Ex.RW1/V is the Agreement deed dated 12th May, 2015 executed between CSK HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

49. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon her. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

50. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked under unregistered contractors and that wages to the workers had been

paid through the contractors from the funds of the project funded by ICR/GOI and not from the grant-in-aid of the university. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked from the year 2007 upto the year 2009 through unregistered contractors. Later, as per this document, she is shown to have worked for the years 2010 and 2011 through registered contractors. Then, the petitioner herself tendered in evidence a copy of seniority list as Ex. PW1/L of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that her name does not find mention in the seniority list. No reason has been assigned by her as to why her name does not figure in the seniority list of daily paid workers maintained by the respondent. She clearly admitted that no objection was ever raised by her for her name being not there in the seniority list. No explanation is also forthcoming from her mouth as to why she did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner herself clearly admitted that she had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. The petitioner in her substantive evidence clearly admitted that she had not filed any of her muster rolls with the petition. This only goes to show that she had never been engaged on the muster roll. Not only this, the petitioner very specifically stated in her cross-examination that these days she is working under the contractor. At this stage, it is apt to mention here that a complete ban has been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

51. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2007 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in her name. No muster-roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The details of the petitioner Ex. RW1/I, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a

calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

52. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

53. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

54. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

55. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that she had not challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having initially worked under unregistered contractors and thereafter under a registered contractor, she is not entitled to any relief as claimed for by her. Hence, both these issues are answered in the negative and are decided against the petitioner.

56. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

57. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of June, 2019.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. :	70/2014
Date of Institution :	22-2-2014
Date of Decision :	24-06-2019

Shri Kuldeep Kukreja s/o Shri Sher Singh Kukreja, r/o Mohalla Upper Julakari, P.O. Hardaspura, Chamba Town, District Chamba, H.P.	. <i>Petitioner.</i>
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Versus

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|---|-----------------------|
| 1. The Amar Ujala Publication Ltd., through Editor, Amar Ujala, C-21, Sector-59, NOIDA-201301, Uttar Pradesh. | |
| 2. The Resident Editor, Amar Ujala, Himachal Pradesh, Shimla-171001. | |
| 3. The Incharge, Amar Ujala, Chamba Mohalla, Sapri, Chamba Town District Chamba, H.P. | . <i>Respondents.</i> |

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner :	Sh. Dharam Malhotra, Adv.
For the Respondent(s) :	Sh. N.L. Kaundal, AR

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kuldeep Kukreja s/o Sh. Sher Singh Kukreja, Mohalla Upper Julakari, P.O. Hardaspura, Chamba Town, Distt. Chamba, H.P. by i) The Amar Ujala Publication Ltd. through The Editor, Amar Ujala, C-21, Sector 59, Noida-201301, Uttar Pradesh. ii.) The Resident Editor, Amar Ujala, Himachal Pradesh, Shimla-171001. iii.) The Incharge, Amar Ujala Chamba, Mohalla Sapri, Chamba Town, Distt. Chamba, H.P. 176310 *w.e.f.* 16.10.2011, as alleged by worker, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was appointed/engaged as a press photographer *w.e.f.* August, 2006 in Amar Ujala, Chamba by respondent No. 1 and had worked continuously without any breaks. He had been provided an identity card by the office of Amar Ujala Kotwali Bazar, Dharamshala, H.P. on 30.9.2011, respondents No. 2 and 3 had asked the petitioner to explain regarding the incident of misbehaviour with the students and teacher of Government Girls Senior Secondary School Chamba. The petitioner had responded to it *vide* letter dated 1.10.2011 and had also filed a letter of Principal Government Girls Senior Secondary School, Chamba dated 18.10.2011 stating that nothing had happened in the school, nor any complaint had been received against the petitioner. However, respondents No. 2 and 3 without any reason had stopped the payment of wages to the petitioner *w.e.f.* 16.10.2011. He was also not paid the minimum wages by the respondents, as envisaged under the Minimum Wages Act. The respondents in their reply before the Conciliation Officer, Chamba claimed that the petitioner had been paid Rs.1,500/- *vide* a cheque, as final payment for his work as a freelance photographer in October, 2011. Thereafter, his services as such were never taken by the respondents, claiming that his services stood terminated on 16th October, 2011. It is illegal and against the principles of natural justice. The petitioner had requested respondents No. 2 and 3 time and again to pay his wages, but without success. S/Shri Girish Gurani and Somi Bhuveta, the predecessors of respondents No. 2 and 3 were responsible for the non payment of wages and harassment to the petitioner. Both these persons have now left the jobs. The services of the petitioner had orally been terminated by the respondents without any reason. He is entitled for re-engagement, with consequential benefits of arrears of salary, wages and seniority *w.e.f.* 16.10.2011 onwards. No notice had been served upon the petitioner as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The respondents had also not complied with the provisions of Sections 25-G and 25-H of the Act. The petitioner had completed more than 240 days continuously in the preceding more than five, hence was entitled for regularization of his services as a press photographer. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and jurisdiction. The contents of the petition were denied on merits. It was asserted that the petitioner was never engaged as a press photographer by the respondents. Infact, he is an agriculturist and also running shop No. 137 of Municipal Committee at Chamba (HP). He remained associated with the respondents on account of his own keen interest. The question of his working continuously without any breaks does not arise. It is specifically denied that the petitioner had not been paid the minimum wages. Since, the petitioner had never been engaged as an employee by the respondents, the question of payment of wages and his completing 240 days, as alleged, does not arise. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 18.9.2014:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 16-10-2011 is illegal and unjustified as alleged? . . .*OPR.*
2. If issue No. 1 is proved in affirmative, whether the petitioner is entitled to benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits etc. as prayed for? . . .*OPR.*
3. Whether the present claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether this Court has no jurisdiction to try the case as alleged? . . .*OPR.*
5. Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kuldeep Kukreja, appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copies of form No.16-A as Ex.PW1/B1 to Ex.PW1/B5, copy of cheque dated 18.10.2011 as Mark-A and copy of identity card as Ex.PW1/C. The petitioner also examined PW2 Shri Gurmeet Nagpal and PW3 Shri Somi Prakash Bogta, as witnesses to the effect that he was an employee of the respondents. Besides this, the petitioner examined PW4 Smt. Urvashi, who claimed that as per the record, there was no complaint against the petitioner. Through the testimony PW5 Shri R. K. Sharma, the petitioner placed on record copies of reply and rejoinder as Ex.PW5/A and Ex.PW5/B. The respondents examined one Shri Naresh Kumar as RW1 and placed on record affidavits of the petitioner as Ex.RW1/A to Ex.RW1/D, certified copy of resolution dated 20.3.2015 as Ex.RW1/E and authority letter as Ex.RW1/F.

7. Arguments of the learned counsel for the petitioner and the learned Authorized representative for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : Not pressed

Relief. : Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Kuldeep Kukreja (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that no interview letter or appointment letter had ever been issued to him by the respondents. He also admitted that Mark-R-1(now Ex.RW1/A), Mark-R-2 (now Ex.RW1/B), Mark-R-3 (now Ex.RW1/C) and Mark-R-4 (now Ex.RW1/D), all bear his signatures. Further, he admitted that in shop No.137 of Municipal Committee, he does the work of Photostat etc. It was also admitted by him that no salary slip or bank voucher slip have been filed by him with the petition. He denied that neither he has an employee of Amar Ujala, nor he was being paid any wages.

11. Ex. PW1/B1 to Ex.PW1/B5 are the copies of form 16-A relating to the petitioner.

12. Ex. PW1/C is the copy of identity card of the petitioner.

13. The petitioner examined Shri Gurmeet Nagpal (PW2) and Shri Som Prakash Bogta (PW3) to show that the petitioner had been working as a press photographer in Amar Ujala. In the cross-examination Shri Gurmeet Nagpal admitted that he had not filed any document showing him to be working as a press reporter with Amar Ujala. He also admitted that alongwith his affidavit no document regarding salary had been annexed. Further, he admitted that the petitioner was well known to him. Shri Som Prakash Bogta (PW3) was categorical that on account of his desire, the petitioner got associated with Amar Ujala and that he was being paid the honorarium by the respondents.

14. PW4 Smt. Urvashi and PW5 Shri Raj Kumar Sharma have only produced the requisitioned records.

15. Ex. PW5/A is the copy of reply to the complaint on behalf of respondent No.1.

16. Ex.PW5/B is the copy of rejoinder to the reply of respondent No.1 relating to the petitioner.

17. Conversely, Shri Naresh Kumar, Senior Officer (HRD), Amar Ujala Publication Ltd. Nagrota Bagwan District Kangra, H.P. (respondent) testified as RW1. He corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he stated that he was issued an appointment letter regarding the employment. He denied that the petitioner was engaged as a photographer and was being paid Rs.3,000/- per month by Amar Ujala. He also denied that on 16.11.2011, the petitioner had been removed from work without any notice and payment of compensation.

18. Ex.RW1/A to Ex.RW1/D are the affidavits of the petitioner.

19. Ex.RW1/E is the certified true copy of the resolution passed in the meeting of board of directors of the company held on March 20th, 2015.

20. Ex.RW1/F is the authority letter authorizing Shri Naresh Kumar, Senior Officer (HRD) Amar Ujala Publications Limited to pursue this case.

21. The version of the petitioner is that he was appointed/engaged as a press photographer by the respondents *w.e.f.* August, 2006 and which fact has been denied by the latter.

22. In so far as the relationship of employer and employee is concerned, in case titled as **Workman of Nilgiri Co-op. Mtk vs. State of Tamil Naidu & Ors. 2004 LLR 351 (SC)**, various tests have been laid down for determining such relationship. In para 38 of the aforesaid decision, it has been observed thus:

“The control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court is required to consider several factors which would have a bearing on the result: (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled; (g) nature of establishment; (h) right to reject”.

23. Similarly, in case titled as **Balwant Rai Saluja and Anr. vs. AIR India Ltd. & Ors., 2014 LLR 1009 (SC)**, the Hon’ble Supreme Court has reiterated the aforesaid law by referring to the aspect of administrative control. It was further held that such burden was required to be discharged by the person who claimed existence of such relationship.

24. In the light of the aforesaid law, it is for the petitioner to establish that he is a workman as defined under Section 2 (s) of the Act. He has not placed on record any document in the shape of appointment letter or salary slips to show that his services were engaged as a press photographer by the respondents. In case titled as **Mallikarujan s/o Basawanthappa Ambekar & Ors. vs. Associated Cement C. Ltd., Gulbarga & Ors., 2015 LLR 92**, it has been held by the Hon’ble Karnataka High Court that relationship of employer-employee may be proved by documentary evidence like appointment letters, pay slip of wages/salary, wages register, sanctioning of leave, issuing termination letter or taking disciplinary action by the employer, etc. No such documents have been placed and exhibited on record by the petitioner in support of his case. Rather, from the affidavits Ex.RW1/A to Ex.RW1/D, it can be gathered that the principal avocation of the petitioner was either business or agriculture and not newspaper journalism. He only remained associated with the newspaper establishment *i.e.* Amar Ujala due to his yearning and not as its employee. It is not the case of the petitioner that these affidavits are forged or fabricated. On the contrary, in the cross-examination he admitted his signatures to be there on all these affidavits. In view of the contents of the affidavits Ex.RW/1A to Ex.RW1/D, I fail to understand as to how the petitioner is claiming that his services were engaged as a press photographer by the respondents.

25. Burden to prove this aspect was on the petitioner, but the evidence led by him can in no manner lead to the conclusion that such burden was duly discharged in accordance with law. The statements of his witnesses PW2 Shri Gurmeet Nagpal and Shri Somi Prakash Bogta are also of no help to him to establish his case. PW2 Shri Gurmeet Nagpal was categorical in his cross-examination that the petitioner was well known to him. Then, he has not placed on record any document to show that he himself was working as a press photographer with the respondents. PW3 Shri Somi Prakash Bogta clearly admitted in his cross-examination that on account of his keen desire, the petitioner remained associated with Amar Ujala and that he was only being paid the honorarium by the respondents. The documents, being in the shape of copies of form no.16-A as Ex.PW1/B1 to Ex.PW1/B5 also do not establish the case of the petitioner regarding the relationship of employer and employee between the parties.

26. Faced with the situation, it was vociferously argued by the learned counsel for the petitioner that the identity card issued by the newspaper establishment Amar Ujala, copy of which is placed on record Ex.RW1/C, would establish the employer-employee relationship. This cannot be accepted. No proof of salary or wages having been paid to the petitioner was produced on record. There was neither appointment nor termination order. The mere production of an identity card is not sufficient evidence to prove the employment. For taking this view, I am guided by the

judgment rendered by the Hon'ble Punjab & Haryana High Court in case titled as ***Rampat vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat & Anr. 2013 LLR 323,***

27. Such being the situation, I have no hesitation to conclude that the services of the petitioner were never engaged as a press photographer by the respondents. No relationship of employer and workman exists between the parties. That being so, the question of termination of the services of the petitioner by the respondents in contravention of the provisions of the Act does not arise.

28. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

29. These issues are decided against the petitioner and in favour of his opponents.

Issue No. 3 :

30. Taking in to account my findings on issues No. 1 to 2 above, it is held that the claim petition is not maintainable in the present form. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is answered in the affirmative and is decided in favour of the respondents and against the petitioner.

Issue No. 4 :

31. Not pressed.

Relief :

32. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of June, 2019.

Sd/-
(**YOGESH JASWAL**),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 152/2014
Date of Institution : 16-4-2014
Date of Decision : 24-6-2019

Shri Ashwani Kumar s/o Shri Mehar Chand, r/o Village Amtrar, P.O. Sunchar, Tehsil and District Kangra, H.P. . *Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ashwani Kumar s/o Shri Mehar Chand, r/o Village Amtrar, P.O. Sunehar, Tehsil and District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Horticulture department *w.e.f.* April, 2003 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Horticulture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Horticulture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2003 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers

to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Horticulture department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No.FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on individual work contract basis during May, 2005, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been

paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done through some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on contract basis from May, 2005 upto July, 2006. He raised various bills. The petitioner had himself left the work at his own from the project *i.e.* 'Wild Apricot/Nucleus Seed and Planting material project', which continued upto 31.3.2008. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had raised the bills. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

4. Whether the petitioner has no *locus standi* to file the case as alleged? . .OPR.
5. Whether the petitioner has no cause of action to file the present case as alleged? . .OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ashwani Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of certificate dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of letter dated 13.11.1998 as Ex. PW1/D, copy of letter dated 17.2.1999 as Ex. PW1/E, copy of letter dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 4.4.2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J, copy of office order dated 19.7.2010 as Ex. PW1/K, and copy of Seniority list as Ex. PW1/L. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of notification dated 13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D to Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of details of the petitioner as Ex. RW1/I, copies of contingent bills/payment receipts as Ex. RW1/J to Ex. RW1/X, copy of Award as Ex. RW1/Y, copy of order dated 20.3.2014 as Ex. RW1/Z, copies of registration certificates as Ex. RW1/Z1 to Ex. RW1/Z3, copies of Agreement deeds as Ex. RW1/Z4 to Ex. RW1/Z9.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Issue No. 4 : Yes

Issue No. 5 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ashwani Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/L.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex.PW1/B is the copy of certificate dated 5.7.2010 relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

19. Ex. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

20. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

21. Ex.PW1/K is the copy of office order dated 19.7.2010 issued by the Registrar, CSK, HPKV, Palampur.

22. Ex. PW1/L is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

23. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2003. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2003 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

25. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

26. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

27. Ex.RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

29. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

30. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

31. Ex.RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

32. Ex. RW/1H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

33. Ex.RW1/I is the copy of working detail of the petitioner.

34. Ex.RW1/J to Ex.RW1/X are the copies of bills/contingent bills relating to the petitioner.

35. Ex.RW1/Y is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

36. Ex.RW1/Z is the copy of order dated 20.3.2014 passed in Reference No. 207/2010 by this Court.

37. Ex. RW1/Z1 is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

38. Ex. RW1/Z2 is the copy of certificate of registration dated 27.7.2011 pertaining to M/s Sun Security Service.

39. Ex. RW1/Z3 is the copy of application for registration of establishments employing contract labour issued by Labour Officer-cum-Registering Officer, Dharamshala.

40. Ex. RW1/Z4 is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

41. Ex. RW1/Z5 is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-cum-Registering Officer, Dharamshala.

42. Ex. RW1/Z6 is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

43. Ex. RW1/Z7 is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

44. Ex. RW1/Z8 is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/Z9 is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/Z10 is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. RW1/Z11 is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

49. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had earlier worked on individual work contract basis and thereafter had worked for the years 2010 & 2011 through registered contractors. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/L of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/J to Ex. RW1/X, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17.2.1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2003 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

50. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2003 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his

part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

51. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

52. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

53. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

54. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

55. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

56. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 163/2014
Date of Institution : 17-4-2014
Date of Decision : 24-6-2019

Shri Karam Chand s/o Shri Hari Ram, r/o village & P.O. Mumta, Tehsil and District Kangra, H.P. *.Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. *.Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Karam Chand s/o Sh. Hari Ram, r/o Village & P.O. Mumta, Tehsil & Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Rice and Wheat department *w.e.f.* the year 1994 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice and Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice-Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice and Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 1994 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were

engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice and Wheat department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No.FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during October, 2003, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor from November, 2003 upto May, 2008. He raised various bills. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had raised the bills as a contractor. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false

registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01.8.2015:

1. Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? . . . *OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable in the present form? . . . *OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? . . . *OPR.*
5. Whether the petitioner has no cause of action to file the present case as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Karam Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of certificate dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of letter dated 13.11.1998 as Ex. PW1/D, copy of letter dated 17.2.1999 as Ex. PW1/E, copy of letter dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 4.4.2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J, copy of office order dated 19.7.2010 as Ex. PW1/K, and copy of Seniority list as Ex. PW1/L. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who

tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of notification dated 13.11.1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D to Ex. RW1/E, copy of letter dated 8.7.1998 as Ex. RW1/F, copy of letter dated 17.2.1999 as Ex. RW1/G, copy of notification dated 26.4.1999 as Ex. RW1/H, copy of details of the petitioner as Ex. RW1/I, copies of contingent bills/payment receipts as Ex. RW1/J to Ex. RW1/V, copy of Award as Ex. RW1/W, copy of order dated 20.3.2014 as Ex. RW1/X, copies of registration certificates as Ex. RW1/Y to Ex. RW1/Z1, copies of Agreement deeds as Ex. RW1/Z2 to Ex. RW1/Z7.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 :	Negative
Issue No. 2 :	Negative
Issue No. 3 :	Yes
Issue No. 4 :	Yes
Issue No. 5 :	Yes
Relief :	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Karam Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/L.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid worker is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster-roll. However, he had to admit that no muster-roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster-

roll. He also admitted that he had worked in various projects of different departments of the university. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex.PW1/B is the copy of certificate dated 5.7.2010 relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

19. Ex. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

20. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

21. Ex.PW1/K is the copy of office order dated 19.7.2010 issued by the Registrar, CSK, HPKV, Palampur.

22. Ex. PW1/L is the seniority list of the Daily waged workers in the CSK HPKV as on 31.3.2008.

23. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1994. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter

stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1994 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

25. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

26. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

29. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

30. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

31. Ex. RW1/G is the copy of office order dated 17.2.1999 issued by the Comptroller, HPKV, Palampur.

32. Ex. RW1/H is the copy of notification dated 26.4.1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/I is the copy of working detail of the petitioner.

34. Ex. RW1/J to Ex. RW1/V are the copies bills/contingent bills relating to the petitioner.

35. Ex. RW1/W is the copy of Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

36. Ex. RW1/X is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

37. Ex. RW1/Y is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

38. Ex. RW1/Z is the copy of certificate of registration dated 27.7.2011 pertaining to M/s Sun Security Service.

39. Ex. RW1/Z1 is the copy of application for registration of establishments employing contract labour issued by Labour Officer-cum-Registering Officer, Dharamshala.

40. Ex. RW1/Z2 is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

41. Ex. RW1/Z3 is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-cum-Registering Officer, Dharamshala.

42. Ex. RW1/Z4 is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

43. Ex. RW1/Z5 is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

44. Ex. RW1/Z6 is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/Z7 is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/Z8 is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. RW1/Z9 is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Makgt. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

49. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked from October, 2003 to 2005 on work individual contract basis and thereafter, from the year 2006 upto the year 2009, he had worked under the unregistered contractor and in the year 2010, he had refused to work under the registered contractor. Later, as per this document, he is shown to have worked for the year 2011 through registered contractor. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/L of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the

seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/J to Ex. RW1/V, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

50. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1994 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

51. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

52. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since,

there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

53. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

54. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under unregistered & registered contractors, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

55. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

56. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 195/2014

Date of Institution : 03-5-2014

Date of Decision : 24-6-2019

Shri Rajinder Kumar s/o Shri Kishu Ram, r/o VPO Banuri, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR

For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Rajinder Kumar, s/o Shri Kishu Ram, r/o V.P.O. Banuri, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agriculture Biotechnology department *w.e.f.* the year 1996 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agriculture Biotechnology department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agriculture Biotechnology department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner

alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Biotechnology department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis. He was engaged on work contract basis during September, 2009, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis from September, 2009 upto April, 2010. He raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had refused to work under a registered contractor during the year 2010 and had only begun to work under registered contractor after interim order dated 14.7.2011 passed by the Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22.4.2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rajinder Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copy of certificate of registration as Ex. PW2/A and copies of licenses of M/s Sun Security & New Vision Security as Ex. PW2/B and Ex. PW2/C respectively. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D16, copy of award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of letter dated 29.1.2011 as Ex. RW1/G, copy of license/registration dated 29.1.2011 as Ex. RW1/H, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/I, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/P, copy of registration certificate dated 11.7.2014 as Ex. RW1/Q and copy of license of M/s Sahayta Security services as Ex. RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Decided accordingly

Issue No. 4 : Yes

Issue No. 5 : Not pressed

Issue No. 6 : Yes

Issue No. 7 : Yes

Issue No. 8 : Yes

Issue No. 9 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rajinder Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be engaged in the department. Volunteered that, no appointment letter was issued to them. He admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA (16 pages) (now as Ex. RW1/D1 to Ex. RW1/D16). He also admitted that as per the bill vouchers he had received the payments. He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of registration certificate of CSKHPKVV Palampur as Ex.PW2/A and copies of licenses of M/s Sun Security and M/s. New Vision as Ex.PW2/B and Ex. PW2/C respectively.

In the cross-examination, he admitted that the university is an educational institute. He feigned ignorance that research work is conducted in the university. Ex. PW2/A was issued for work in the Research Project in Agriculture Field Operations.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.
13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.
14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.
15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.
16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.
17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.
18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.
19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.
20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.
21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.
22. Ex. PW2/B to Ex.PW2/C are the copies of licenses dated 2.9.2011 and 21.8.2012 pertaining to M/s Sun Security Service and M/s Nuvision Commercial & Escorts services.
23. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1996. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1996 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D1 to Ex. RW1/D16 are the copies of contingent bills/contractual bills relating to the petitioner.

29. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

31. Ex. RW1/G is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/H is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security Services.

34. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/K is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/L is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

41. Ex. RW1/Q is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial and Escorts Services.

42. Ex.RW1/R is the copy of licence dated 5.8.2006 relating to M/s Sahyata Security.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills/contractual bills, Ex. RW1/D1 to Ex. RW1/F16. These are bills through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D16, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills/contractual bills. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1996 upto April, 2010, without any breaks. No such record has been seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this

matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. :	185/2014
Date of Institution :	02-5-2014
Date of Decision :	25-6-2019

Shri Kuldeep Kumar s/o Late Shri Jagdish Chand, r/o Village Uthdan Gran, P.O. Ramedh, Tehsil Dharamshala, District Kangra, H.P. . *Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kuldeep Kumar s/o Late Shri Jagdish Chand, r/o Village Uthdan Gran, P.O. Ramedh, Tehsil Dharamshala, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Rice & Wheat department *w.e.f.* the year 2000 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice & Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice & Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200

workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice & Wheat department from 18.7.2011 upto 11.6.2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster-roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster-roll basis.

He was engaged on individual work contract basis during the year 2002, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster-roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor and had raised bill in the month of June, 2007 amounting to Rs.10,710/-. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had raised the bills as a contractor. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:

1. Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*

3. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? . . .*OPR.*
4. Whether the petitioner has no *locus standi* to file the case as alleged? . . .*OPR.*
5. Whether this court has no jurisdiction to file the present case as alleged? . . .*OPR.*
6. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
7. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR.*
8. Whether the petitioner has not approached the Court with clean hands as alleged? . . .*OPR.*
9. Whether the petitioner has suppressed the true and material facts from the Court as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kuldeep Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5.7.2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13.11.1998 as Ex. PW1/D, copy of office order dated 17.2.1999 as Ex. PW1/E, copy of notification dated 26.4.1999 as Ex. PW1/F, copy of letter dated 4.9.1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19.7.2010 as Ex. PW1/J. The petitioner also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copy of certificate of registration as Ex. PW2/A and copies of licenses of M/s Sun Security & New Vision Security as Ex. PW2/B and Ex. PW2/C respectively. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of bill voucher as Ex. RW1/D1, copy of award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of letter dated 29.1.2011 as Ex. RW1/G, copy of license/registration dated 29.1.2011 as Ex. RW1/H, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/I, copies of agreements dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/P, copy of registration certificate dated 11.7.2014 as Ex. RW1/Q and copy of license of M/s Sahayta Security services as Ex. RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|---------------|---------------------|
| Issue No. 1 : | Negative |
| Issue No. 2 : | Negative |
| Issue No. 3 : | Decided accordingly |

Issue No. 4 :	Yes
Issue No. 5 :	Not pressed
Issue No. 6 :	Yes
Issue No. 7 :	Yes
Issue No. 8 :	Yes
Issue No. 9 :	Yes
Relief :	Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kuldeep Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be engaged in the department. Volunteered that, no appointment letter was issued to them. He admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster-rolls have been regularized. He clearly admitted his signatures on Mark-RA (02 pages) (now as Ex. RW1/D1). He also admitted that as per the bill voucher he had received the payment. He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of registration certificate of CSKHPKVV Palampur as Ex.PW2/A and copies of licenses of M/s Sun Security and M/s. New Vision as Ex.PW2/B and Ex. PW2/C respectively.

In the cross-examination, he admitted that the university is an educational institute. He feigned ignorance that research work is conducted in the university. Ex. PW2/A was issued for work in the Research Project in Agriculture Field Operations.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development–Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29.1.2011.

22. Ex. PW2/B to Ex.PW2/C are the copies of licenses dated 2.9.2011 and 21.8.2012 pertaining to M/s Sun Security Service and M/s Nuvision Commercial & Escorts services.

23. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2000 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex.RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

28. Ex.RW1/D1 & Ex.RW1/D2 are the copies of contingent bill/bill relating to the petitioner.

29. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference No.207/2010 by this Court.

31. Ex. RW1/G is the copy of letter dated 29.1.2011 regarding registration of establishment.

32. Ex. RW1/H is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security Services.

34. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/K is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/L is the copy of Agreement Deed dated 30.3.2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

41. Ex.RW1/Q is the copy of certificate of registration dated 11.7.2014 relating to M/s Nu Vision Commercial and Escorts Services.

42. Ex.RW1/R is the copy of licence dated 5.8.2006 relating to M/s Sahyata Security.

43. Ex. R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31.3.2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31.3.2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Makgt. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514*, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bill/bill, Ex. RW1/D1 to Ex.RW1/D2. These are bills through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster-rolls. No muster-roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster-roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D2, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bill/bill. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17.2.1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into

account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2000 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster-rolls must have been issued in his name. No muster-roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (H.P.) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco**

Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster-roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 116/2014
Date of Institution : 26-02-2014
Date of Decision : 21-06-2019

Shri Kailash Nath s/o Shri Narender Kumar, r/o Village and P.O. Purana Bazar, Tehsil
Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Chairman, M.G. Group of Institute, Badhu, Tehsil Chachiot, District Mandi, H.P.
. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None
For Respondent No. 1 : Sh. Lokesh Sharma, Adv.
For Respondent No. 2 : None

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kailash Nath s/o Shri Narender Kumar, r/o Village and P.O. Purana Bazar, Tehsil Sunder Nagar, District Mandi, H.P. employed as Administrative Executive drawing salary @ Rs. 8,000/- per month by the Chairman M.G. Group of Institute, Badhu, Tehsil Chachiot, District Mandi, H.P. during November, 2011 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. The case was listed for appearance of respondent No. 2 for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/ petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall

follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services during November, 2011 by the respondents was without complying with the provisions of the Act and, thus, illegal and unjustified. Although, a plea to this effect has been taken by the petitioner in the statement of claim but, however, the same has remained a mere saying on record, as no evidence in this regard has been adduced by the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any monetary benefits, as claimed for by him in the statement of claim. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 843/2016

Date of Institution : 26-11-2016

Date of Decision : 20-06-2019

Shri Keshav Ram s/o Shri Hukam Chand, r/o Village Dumu, P.O. Balindi, Tehsil Karsog,
District Mandi, H.P. *Petitioner.*

Versus

The Executive Engineer, I&PH, Division Karsog, District Mandi, H.P. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Shri Naveen Chander, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Keshav Ram s/o Shri Hukam Chand, r/o Village Dumu, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. *w.e.f.* 01.01.1993 by the Executive Engineer, I.&P.H. Division, Karsog, District Mandi, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 20 years *vide* demand notice dated 25.04.2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily rated class-IV employee (beldar) in the year 1991 and had worked upto the year 1993 regularly. He had completed 240 days in each calendar year. His services were illegally terminated by the respondent without any rhyme or reason. After his termination, the respondent

had retained juniors to the petitioner. New/fresh hands had also been engaged by the respondent/department and the petitioner was not called for re-engagement, as required under Rules 81 to 83 of the Industrial Disputes Rules framed by the Government of Himachal Pradesh. The respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Persons junior and fresh hands, namely, S/Sh. Neemat Ram, Khub Chand, Lachi Ram, Manohar Lal had been retained by the respondent. He is entitled for re-engagement with all consequential benefits as well as continuity in service and seniority from the date of his initial appointment. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is denied that the services of the petitioner had been engaged as beldar in the year 1991 and had worked upto the year 1993. It was asserted that he was engaged as a beldar on daily wage basis in the month of September, 1992 and had worked intermittently only for 56 days and thereafter, he had left the work of his own sweet will. It is denied that the services of the petitioner had been orally terminated by the respondent. Further, it was averred that no fresh persons had been engaged by the respondent in place of the petitioner. The respondent had not violated any of the provisions of the Act. It was asserted that the petitioner had not completed 240 days in the preceding twelve calendar months, but he had left the work of his own accord. It was denied that S/Sh. Neemat Ram, Khub Chand, Lachi Ram and Manohar Lal were engaged in place of the petitioner. The aforesaid persons have continuously worked with the respondent. The services of the petitioner had never been terminated by the respondent, rather he had left the work of his own sweet will. It is stated that only those workers were regularized by the respondent who had fulfilled the requisite criteria of regularization as per the government policy. The petitioner had raised the demand notice after about twenty years without explaining the long delay. He is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30.5.2018:

1. Whether termination of services of the claimant/petitioner by the Respondent *w.e.f.* 01.01.1993 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Arguments of the learned Deputy District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 :	Negative
Issue No. 3 :	Not pressed
Issue No. 4 :	No
Relief :	Claim petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 to 2 :

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 1993 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily rated Class-IV employee (beldar) in the year 1991. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for evidence of the petitioner for 20.6.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex-parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus.—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be

represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

14. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 20.6.2019. In these circumstances, the Tribunal can proceed and pass *ex-parte* award on its merits.

17. Although, it is an admitted case of the parties that the services of the petitioner were engaged as a daily rated Class-IV employee (beldar), but as per the reference it was required of the petitioner to plead and prove on record that the termination of his services in the year 1993 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led on record by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

18. Not pressed.

Issue No. 4 :

19. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 842/2016
Date of Institution : 26-11-2016
Date of Decision : 20-06-2019

Shri Tara Chand s/o Shri Pat Ram, r/o Village Dumu, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, I&PH, Division Karsog, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For the Respondent : Shri Naveen Chander, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Tara Chand s/o Late Shri Pat Ram, r/o Village Dumu, P.O. Balindi, Tehsil Karsog, District Mandi, H.P. during year, 1992-93 by the Executive Engineer, I.&P.H. Division, Karsog, District Mandi, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 20 years *vide* demand notice dated 25.04.2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service

benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily rated class-IV employee (beldar) in the year 1991 and had worked upto the year 1993 regularly. He had completed 240 days in each calendar year. His services were illegally terminated by the respondent without any rhyme or reason. After his termination, the respondent had retained juniors to the petitioner. New/fresh hands had also been engaged by the respondent/department and the petitioner was not called for re-engagement, as required under Rules 81 to 83 of the Industrial Disputes Rules framed by the Government of Himachal Pradesh. The respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). Persons junior and fresh hands, namely, S/Sh. Neemat Ram, Khub Chand, Lachi Ram, Manohar Lal had been retained by the respondent. He is entitled for re-engagement with all consequential benefits as well as continuity in service and seniority from the date of his initial appointment. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It is denied that the services of the petitioner had been engaged as beldar in the year 1991 and had worked upto the year 1993. It was asserted that he was engaged as a beldar on daily wage basis in the month of September, 1992 and had worked intermittently only for six days and thereafter, he had left the work of his own sweet will. It is denied that the services of the petitioner had been orally terminated by the respondent. Further, it was averred that no fresh persons had been engaged by the respondent in place of the petitioner. The respondent had not violated any of the provisions of the Act. It was asserted that the petitioner had not completed 240 days in the preceding twelve calendar months, but he had left the work of his own accord. It was denied that S/Sh. Neemat Ram, Khub Chand, Lachi Ram and Manohar Lal were engaged in place of the petitioner. The aforesaid persons have continuously worked with the respondent. The services of the petitioner had never been terminated by the respondent, rather he had left the work of his own sweet will. It is stated that only those workers were regularized by the respondent who had fulfilled the requisite criteria of regularization as per the government policy. The petitioner had raised the demand notice after about twenty years without explaining the long delay. He is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 30.5.2018:

1. Whether termination of services of the claimant/petitioner by the respondent during year, 1992-93 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .*OPR.*

Relief.

6. Arguments of the learned Deputy District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Negative

Issue No. 3 : Not pressed

Issue No. 4 : No

Relief : Claim petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 to 2 :

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 1993 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily rated class-iv employee (beldar) in the year 1991. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for evidence of the petitioner for 20.6.2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central

Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 20.6.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Although, it is an admitted case of the parties that the services of the petitioner were engaged as a daily rated class-IV employee (beldar), but as per the reference it was required of the petitioner to plead and prove on record that the termination of his services in the year 1992-93 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led on record by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3 :

18. Not pressed.

Issue No. 4 :

19. In *Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Relief :

21. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 46/2019
Date of Institution : 23-05-2019
Date of Decision : 28-06-2019

Shri Bablu Ram s/o Shri Thana Ram, r/o Village Kulera, P.O. Banet, Tehsil Bhatiyat, District Chamba, H.P. . *Petitioner.*

Versus

The Managing Director, M/s Sunshine Hydro Power Ltd., Village Nail, P.O. Banet, Tehsil Bhatiyat, District Chamba, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.
For the Respondent : Nemo.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Bablu Ram s/o Shri Thana Ram, r/o Village Kulera, P.O. Banet, Tehsil Bhatiyat, District Chamba, H.P. by the Managing Director, M/s Sunshine Hydro Power Ltd., Village Nail, P.O. Banet, Tehsil Bhatiyat, District Chamba, H.P. *w.e.f.* 04-09-2017 without serving notice, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?”

2. The case was listed for service of parties for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due service, petitioner had remained *ex-parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It

creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the petitioner nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 04-09-2017 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner. At the risk of repetition the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of June, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

उच्चतर शिक्षा विभाग

अधिसूचना

शिमला-2, 8 जुलाई, 2020

नस्ति संख्या: ई.डी.एन.-ख-ख (16)-11/2019.—हिमाचल प्रदेश के राज्यपाल, भारत के संविधान के अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश लोक सेवा आयोग के परामर्श से अधिसूचना संख्या: ई.डी.एन.-क-ख (3)-3/1998-पार्ट-II, तारीख 20-09-2010 द्वारा अधिसूचित हिमाचल प्रदेश उच्चतर शिक्षा विभाग, स्नातकोत्तर अध्यापक, वर्ग-III (अराजपत्रित) भर्ती और प्रोन्नति नियम, 2010 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात :-

1. संक्षिप्त नाम और प्रारम्भ.—(1)इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश उच्चतर शिक्षा विभाग, प्रवक्ता (विद्यालय-नई व्यवस्था), वर्ग-III (अराजपत्रित), भर्ती और प्रोन्नति (संशोधन) नियम, 2020 है।

2. ये नियम राजपत्र (ई-गज़ट), हिमाचल प्रदेश में प्रकाशित किए जाने की तारीख से प्रवृत्त होंगे।

2. उपाबन्ध—“क” का संशोधन.—हिमाचल प्रदेश उच्चतर शिक्षा विभाग, प्रवक्ता (विद्यालय—नई व्यवस्था), वर्ग—III (अराजपत्रित), भर्ती और प्रोन्नति नियम, 2010 के उपाबन्ध—“क” में;—

(क) स्तम्भ संख्या: 6 के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात: —
“18 से 45 वर्ष”

(ख) स्तम्भ संख्या: 7 के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात: —

(क) अनिवार्य अर्हताएं

1. शैक्षणिक अर्हताएं.—

(i) किसी मान्यता प्राप्त विश्वविद्यालय से सम्बद्ध विषय में स्नातकोत्तर उपाधि कुल मिलाकर कम से कम 50 प्रतिशत, निम्नलिखित विषयों में, अर्थात :—

(क) प्रवक्ता (विद्यालय—नई व्यवस्था) (अंग्रेजी) : अंग्रेजी

(ख) प्रवक्ता (विद्यालय—नई व्यवस्था) (हिन्दी) : हिन्दी

(ग) प्रवक्ता (विद्यालय— नई व्यवस्था) (संस्कृत) : संस्कृत

(घ) प्रवक्ता (विद्यालय— नई व्यवस्था) (गणित) : (गणित/एप्लाइड गणित)

(ङ) प्रवक्ता (विद्यालय— नई व्यवस्था) (भौतिक शास्त्र): भौतिकी/इलैक्ट्रॉनिक्स/न्यूक्लियर भौतिकी ।

(च) प्रवक्ता (विद्यालय— नई व्यवस्था) (रसायन विज्ञान): रसायन विज्ञान/जीव विज्ञान

(छ) प्रवक्ता (विद्यालय— नई व्यवस्था) (जीव विज्ञान): वनस्पति विज्ञान/प्राणी विज्ञान/जीवन विज्ञान/माइक्रोबायोलॉजी/बायोटेक्नालॉजी/मौलिक्यूलर-बायोलॉजी/प्लांट-फिजियोलॉजी:

परन्तु स्नातक स्तर पर उन्होंने वनस्पति विज्ञान और प्राणी विज्ञान का अध्ययन किया हो।

(ज) प्रवक्ता (विद्यालय— नई व्यवस्था) (गृह विज्ञान): गृह विज्ञान

(झ) प्रवक्ता (विद्यालय— नई व्यवस्था) (समाज शास्त्र): समाज शास्त्र

(ञ) प्रवक्ता (विद्यालय— नई व्यवस्था) (संगीत) (संगीत)/वाद्य/स्वर: संगीत/वाद्य/स्वर

(ट) प्रवक्ता (विद्यालय— नई व्यवस्था) (इतिहास): इतिहास

(ठ) प्रवक्ता (विद्यालय— नई व्यवस्था) (भूगोल): भूगोल

(ड) प्रवक्ता (विद्यालय— नई व्यवस्था) (वाणिज्य): वाणिज्य और लेखा शास्त्र/वित्तीय लेखा और आयकर अध्ययन के एक मुख्य विषय के तौर पर एम0 एफ0 सी0 (वित्तीय एवं नियन्त्रण में स्नातकोत्तर) की उपाधि धारक भी वाणिज्य विषय में प्रवक्ता (विद्यालय— नई व्यवस्था) के पद के लिए पात्र होगा ।

(ढ) प्रवक्ता (विद्यालय— नई व्यवस्था) (अर्थशास्त्र): अर्थशास्त्र/एल्लाइड अर्थशास्त्र/बिजनैस अर्थशास्त्र ।

(ण) प्रवक्ता (विद्यालय—नई व्यवस्था) (राजनीति शास्त्र): राजनीति शास्त्र

(त) प्रवक्ता (विद्यालय—नई व्यवस्था) (कम्प्यूटर विज्ञान): कम्प्यूटर विज्ञान

(क) किसी मान्यता प्राप्त विश्वविद्यालय/संस्थान से कम्प्यूटर विज्ञान/सूचना प्रौद्योगिकी में बी. ई. या बी. टैक ।

या

किसी मान्यता प्राप्त विश्वविद्यालय/संस्थान से (किसी भी विद्या शाखा) में बी. ई. या बी. टैक और किसी मान्यता प्राप्त विश्वविद्यालय/संस्थान से कम्प्यूटर विज्ञान/टैक्नोलाजी/एप्लीकेशन में स्नातकोत्तर डिप्लोमा ।

या

किसी मान्यता प्राप्त विश्वविद्यालय/संस्थान से (कम्प्यूटर विज्ञान)/विज्ञान निष्णात/एम.सी.ए.
या

किसी मान्यता प्राप्त विश्वविद्यालय से गणित/भौतिकी में स्नातकोत्तर उपाधि के साथ किसी मान्यता प्राप्त विश्वविद्यालय/संस्थान से कम्प्यूटर विज्ञान/एप्लीकेशन में स्नातकोत्तर डिप्लोमा।
या

डोएक सोसाईटी, सूचना और संचार तकनीक मन्त्रालय से "बी" या "सी" स्तर का कोर्स।

(ख) हिमाचल के विद्यालयों में कम्प्यूटर अध्यापन के रूप में पांच वर्ष या इससे अधिक का अध्ययन का अनुभव।

2. (क) व्यावसायिक अर्हता.—

(i) किसी मान्यता प्राप्त विश्वविद्यालय/संस्थान से व्यावसायिक अर्हता के रूप में कम से कम 50 प्रतिशत अंकों के साथ शिक्षा स्नातक (बी0 एड0)।

या

किसी मान्यता प्राप्त विश्वविद्यालय से दो वर्ष का एकीकृत एम0एस0सी0 एड0 कोर्स।

(ii) प्रवक्ता (विद्यालय—नई व्यवस्था) (कम्प्यूटर विज्ञान) को बी0एड0 में छूट होगी।

(ख) वाणिज्य स्नातकोत्तर (एम0 कॉम0) अभ्यर्थियों के लिए हिमाचल प्रदेश विश्वविद्यालय द्वारा वाणिज्य स्नातक/वाणिज्य स्नातकोत्तर अभ्यर्थियों के लिए बी0एड0 कोर्स अनुज्ञात करने की तारीख से तीन वर्ष की अवधि के अवसान तक बी0एड0 की अर्हता अनिवार्य नहीं होगी:—

टिप्पण.—

(i) जीव विज्ञान विषय में प्रवक्ता (विद्यालय—नई व्यवस्था) की दशा में अभ्यर्थी द्वारा वनस्पति विज्ञान/प्राणी विज्ञान/जीवन विज्ञान/माईक्रो बायोलॉजी/जैव तकनीकी/मौलिक्यूलर बायोलॉजी/प्लांट फिजियोलॉजी में एम0एस0सी0 की स्नातकोत्तर उपाधि प्राप्त की होनी चाहिए :

परन्तु उन्होंने स्नातक स्तर तक वनस्पति विज्ञान और प्राणी विज्ञान का अध्ययन किया हो।

(ii) वाणिज्य विषय में प्रवक्ता (विद्यालय—नई व्यवस्था) की दशा में अभ्यर्थी का किसी मान्यता प्राप्त विश्वविद्यालय से वाणिज्य स्नातकोत्तर उत्तीर्ण होना चाहिए।

(iii) लोक प्रशासन में स्नातकोत्तर उपाधि वाले अभ्यर्थी राजनीति विज्ञान विषय में प्रवक्ता (विद्यालय—नई व्यवस्था) के पद हेतु भी पात्र होंगे।

(iv) विज्ञान विषयों अर्थात् भौतिकी, रसायन विज्ञान और जीव विज्ञान की दशा में अभ्यर्थियों ने विज्ञान विष्णात (एम0एस0सी0) की उपाधि नियमित अभ्यर्थी के रूप में प्राप्त की हो। तथापि, वे अभ्यर्थी भी जिन्होंने उक्त विषयों में 06-04-2010 से पूर्व दूरवर्ती शिक्षा पद्धति के माध्यम से एम0एस0सी0 की उपाधि प्राप्त कर ली है या विज्ञान निष्णात (एम0एस0सी0) में प्रवेश लिया हो, प्रवक्ता (विद्यालय—नई व्यवस्था) के पद के लिए पात्र होंगे।

(ग) स्तम्भ संख्या: दस के सामने विद्यमान उपबन्धों के स्थान पर निम्नलिखित रखा जाएगा, अर्थात्:—

(i) पचास प्रतिशत प्रोन्नति द्वारा ऐसा न होने पर सीधी भर्ती द्वारा, यथास्थिति नियमित आधार पर या संविधा आधार पर भर्ती द्वारा।

- (ii) पचास प्रतिशत सीधी भर्ती द्वारा यथास्थिति नियमित आधार पर सीधी भर्ती द्वारा या संविधा आधार पर भर्ती द्वारा।

आदेश द्वारा,

राजीव शर्मा, भा.प्र.से.,
सचिव (शिक्षा)

[Authoritative English text of this Department Notification No. EDN-B-B(16)-11/2019 dated 08-07-2020 as required under clause (3) of Article 348 of the Constitution of India]

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-2, the 8th July, 2020

File No. EDN-B-B(16)-11/2019.—In exercise of the powers conferred by provision to Article 309 of the Constitution of India, the Governor, Himachal Pradesh, in consultation with the H.P. Public Service Commission, is pleased to make the following Rules, further to amend the Himachal Pradesh, Higher Education Department, Post Graduate Teacher Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2010 notified *vide* Notification No. EDN-A-Kha(3)-3/98-Part-II dated 20-09-2010, namely:—

1. Short title and Commencement.—(1) These rules may be called the Himachal Pradesh Higher Education Department, Lecturer (School-New), Class-III (Non-Gazetted) Recruitment and Promotion (Amendment) Rules, 2020

(2) These rules shall come into force from the date of their publication in the Rajpatra (e-Gazette), Himachal Pradesh.

2. Amendment of Annexure-A.—In Annexure-A to the Himachal Pradesh, Higher Education Department, Lecturer (School-New), Class-III (Non-Gazetted) Recruitment and Promotion Rules, 2010.—

- (a) for the existing provisions against Col. No. 6, the following shall be substituted, namely:—

“Between 18 to 45 years.”,

- (b) for the existing provisions against Col. No. 7, the following shall be substituted, namely:—

- (a) Essential qualifications.—

1. Academic qualification.—

- (i) Master’s Degree in the subject concerned from a recognized University (with minimum of 50% marks in aggregate) in the following subjects, namely:—

- (a) Lecturer (School-New) (English): English
(b) Lecturer (School-New) (Hindi): Hindi

- (c) Lecturer (School-New) (Sanskrit): (Sanskrit)
- (d) Lecturer (School-New) (Mathematics):
(Mathematics / Applied Mathematics).
- (e) Lecturer (School-New) (Physics):
Physics / Electronics / Nuclear physics.
- (f) Lecturer (School-New) (Chemistry):
Chemistry / Biochemistry.
- (g) Lecturer (School-New) (Biology): Botany/ Zoology/ Life Sciences/
Microbiology/Bio-Technology/Molecular Biology/ Plant Physiology:

Provided that they have studied Botany and Zoology at Graduation level.

- (h) Lecturer (School-New) (Home Science): Home Science.
- (i) Lecturer (School-New) (Sociology): Sociology.
- (j) Lecturer (School-New) (Music) Instrumental/Vocal: Music/
Instrumental/Vocal.
- (k) Lecturer (School-New) (History): History.
- (l) Lecturer (School-New) (Geography): Geography.
- (m) Lecturer (School-New) (Commerce): Commerce with Accountancy/
Financial Accountancy and Income Tax as major subjects of study.
Holders of degree of MFC (Master of Finance Control) are also eligible
for the post of Lecturer (School-New) in Commerce subject.
- (n) Lecturer (School-New) (Economics): Economics/Applied Economics/
Business Economics.
- (o) Lecturer (School-New) (Political Science): Political Science.
- (p) Lecturer (School-New) (Computer Science): Computer Science.
- (a) B.E or B.Tech. in Computer Science/Information Technology from a
recognized University/Institute;

OR

B.E or B.Tech. (any stream) from a recognized University/Institute and Post Graduate Diploma in Computer Science/Technology/Applications from a recognized University/Institute;

OR

M.Sc. (Computer Science)/MCA from a recognized University/Institute;

OR

Post Graduate Degree in Mathematics/Physics from a recognized University with Post Graduate Diploma in Computer Science/ Applications from a recognized University/Institute;

OR

“B” or “C” level course from DOEACC Society- Ministry of information and communication Technology.

- (b) Experience of teaching of five years or more as Computer Teacher in Schools of Himachal Pradesh.

2. (a) Professional qualification.-

- (i) Bachelor of Education (B.Ed.) as professional qualification from recognized University/Institutions with minimum 50% marks;

OR

Two years integrated M.Sc. Ed. Course from a recognized University.

- (ii) (a) Lecturer (School-New) (Computer Science) are exempted from B.Ed;
- (b) For M.Com. candidates, B.Ed. qualification will not be essential till the expiry of period of three years from the date H.P. University allows B.Com./ M.Com candidates to undertake B.Ed. Degree/Course.

NOTE.—

- (i) In case of Lecturer (School-New) in Biology subject the candidate must have qualified Post Graduate Degree of M.Sc. in Botany/ Zoology/Life Sciences/ Micro Biology / Bio-Technology/Molecular Biology/Plant physiology:

Provided that they have studied Botany and Zoology at graduation level.

- (ii) In case of Lecturer (School-New) in Commerce, the candidates must have passed M.Com. from a recognized University.
- (iii) The candidates having Master Degree in Public Administration are also eligible for the post of Lecturer (School-New) in Political Science subject.
- (iv) In case of Science subjects *i.e.* Physics, Chemistry and Biology; candidates must have obtained the degree of M.Sc. as regular candidates. However, the candidates who have obtained the degree of M.Sc. through distance education prior to 6-4-2010 in the said subjects are also eligible for the post of Lecturer (School- New).
- (c) for the existing provisions against Col. No. 10, the following shall be substituted, namely:—
- (i) 50% by promotion failing which by direct recruitment on regular basis or contract basis, as the case may be.
- (ii) 50% by direct recruitment on regular basis or by recruitment on contract basis, as the case may be.

By order,

Rajeev Sharma, IAS,
Secretary (Education).